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# 1 I N D E X

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7

# 8 E X H I B I T S

23 Q -- what we all do in conversation,  
24 shaking our head for yes or no or making sounds.  
25 Let me begin by asking you some basic

13

1 background information about yourself.

2 Are you married?

3 A Yes.

4 Q What is your wife's name?

5 A Mary.

6 Q Same last name, Matlock?

7 A Yes.

8 Q What is her maiden name?

9 A Edgar.

10 Q Do you have children who are 18 or older?

11 A Yes.

12 Q Beginning with your oldest child, give me  
13 the names of your children who are 18 or older.

14 A Michael.

15 Q Same name, Matlock?

16 A Yes.

17 Q And Michael is how old?

18 A 30- -- we'll say 36.

19 Q Married?

20 A Yes.

21 Q What's his wife's name?

22 A Julie.

23 Q Matlock?

24 A Yes.

25 Q Do they have any children who are 18 or

14

1 older?  
2 A They do not.  
3 Q Do you have other children?  
4 A Yes.  
5 Q What's the name and age of your next  
6 child?  
7 A Deborah.  
8 Q What's Deborah's last name?  
9 A Delp.  
10 Q How old is Deborah?  
11 A 35.  
12 Q Deborah's married then?  
13 A Yes.  
14 Q What's her husband's name?  
15 A Jason.  
16 Q Delp?  
17 A Yes.  
18 Q Do they have children 18 or older?  
19 A They do not.  
20 Q Do you have other children?  
21 A I do not.  
22 Q Does your wife have other children?  
23 A She does not.  
24 Q How long have you and your wife been  
25 married?

15

1 A 39 years.  
2 Q Where are you from?  
3 A My current residence?  
4 Q No, let's get at it this way. Where did  
5 you go to high school?

6 Matlock dep tran  
A Oh. Parma, P-a-r-m-a, Missouri.  
7 Q You graduated from high school?  
8 A Yes, sir.  
9 Q In what year?  
10 A 1978.  
11 Q Where is your wife from, that is, where  
12 did she go to high school?  
13 A Portageville, Missouri.  
14 Q Earlier I asked you whether you had given  
15 a deposition before, and you indicated that you had  
16 not.  
17 Have you ever given testimony under oath  
18 in any proceeding?  
19 A I don't believe so.  
20 Q And when I say "any proceeding," court  
21 would be one example.  
22 You've never testified under oath in  
23 court?  
24 A Okay. I was a character witness once.  
25 Q In a case in which jurisdiction?

16

1 A I -- I don't know about jurisdiction. It  
2 was a young man in my youth group. He was a student at  
3 Liberty University, I believe, so it was in Lynchburg.  
4 Q In Lynchburg.  
5 And about how long ago was that?  
6 A Somewhere in the neighborhood I would say  
7 at least ten years ago, maybe longer.  
8 Q Was that a criminal case?  
9 A You know, I was just there for -- to --  
10 they brought me in to talk about his days in my Sunday

Matlock dep tran  
11 school class. I didn't -- I don't remember what it was  
12 about, sir.

13 Q Have you testified in any other court  
14 proceeding?

15 A I don't believe so.

16 Q Have you testified in any administrative  
17 proceedings? Common examples would be unemployment  
18 compensation, workers' Compensation, Social Security  
19 hearings, any administratings at all.

20 A No, none of those mentioned. I'm not  
21 aware of any.

22 Q Or any other administrative proceedings.

23 A And that would include if I was sworn in,  
24 is that -- that would be a deposition or is that --  
25 where I would be sworn in?

17

1 Q Well, I don't know whether it would be a  
2 deposition. It may or may not.

3 But, yes, in any proceeding where you  
4 were sworn in, as you just were, to testify under oath.

5 A I have no memory of one.

6 Q Your son, is he a teacher?

7 A He's a principal. He's an administrator.

8 Q Principal.

9 And he is a principal -- strike that.

10 He serves as a principal in what school?

11 A Bristol, Virginia Middle School.

12 Q How long has he served as a principal?

13 A Counting his years as assistant  
14 principal, approximately five. It could be six. Five,  
15 six years.

16                   Q       Matlock dep tran  
Did he teach before that?  
17                   A       Yes, sir.  
18                   Q       How many years did he have in teaching,  
19 approximately?  
20                   A       Eight.  
21                   Q       Does his wife work outside the home?  
22                   A       Yes, she does.  
23                   Q       Where does she work?  
24                   A       She teaches for Washington County Public  
25 Schools.

18

1                   Q       Are you familiar with the robotics  
2 competition that took place at James Madison University  
3 involving your son some years ago?  
4                   A       Involving -- I'm aware of the robotics  
5 competition that involved his school, yes, sir.  
6                   Q       And did your son attend that competition?  
7                   A       Yes, as an administrator he did.  
8                   Q       And was that in Harrisonburg or where?  
9                   A       I assume it was in Harrisonburg.  
10                  Q       And did the Center pay for your son to  
11 take his students to the event?  
12                  A       The Center was a co-sponsor of the  
13 Virginia Middle School team, yes, sir.  
14                  Q       A co-sponsor in the sense that it paid  
15 money?  
16                  A       Yes, sir.  
17                  Q       And what was that amount?  
18                  A       I don't know the exact amount, sir. I --  
19 if I guessed, I would say somewhere in the neighborhood  
20 of \$1100.

Matlock dep tran  
21 Q Did you authorize that expenditure?  
22 A Well, I submitted the receipts, yes, sir.  
23 Q You submitted the receipts after the  
24 event was over?  
25 A Yes, sir.

19

1 Q What about before the event took place.  
2 Did the Center plan to pay for the event?  
3 A Plan to pay for which event, sir?  
4 Q The event that we're talking about, the  
5 robotics competition at James Madison University.  
6 A Our institution, our agency, had a long  
7 history of sponsoring teams and sponsoring schools well  
8 before I got there. We are the regional host of the  
9 LEGO robotics competition, and on a regular basis we  
10 sponsor teams.  
11 So, yes, sir, we have -- have before,  
12 before I accepted the position, sponsored teams and  
13 have sponsored teams since my arrival, multiple teams.  
14 Q And did the Center sponsor any other  
15 schools to attend the robotics competition at  
16 James Madison University?  
17 A The school did not sponsor any other --  
18 some schools took their money for their team expenses.  
19 Some -- Virginia Middle chose to take theirs for the  
20 competition.  
21 Q Did the Center pay for any other schools  
22 to attend the robotics competition?  
23 A In that year?  
24 Q Yes, sir.  
25 A Not in that year, but others, yes, sir.

20



1 Q How did you learn about the robotics  
2 competition for that year?

3 A It's held in our building, sir.

4 Q So is that how you learned about it?

5 A Well, yes, sir. It's been in that  
6 building for quite some time. When I was  
7 vice president, everyone in our community is aware that  
8 the regional robotics competition is held in that  
9 building.

10 Q Who is aware? Everybody?

11 A I would say it's common within the K12  
12 arena that schools who participate in robotics know  
13 about it.

14 Q So the competition was in Abingdon at the  
15 Center and not in Harrisonburg?

16 A No, sir. There is a State competition.  
17 You asked me how I knew about robotics competition.

18 Q The robotics competition that your son  
19 attended --

20 A Yes, sir.

21 Q -- took place, let's be specific, in the  
22 State of Virginia; correct?

23 A Yes, sir.

24 Q In what city in Virginia?

25 A The first competition was in Abingdon,

21

1 Virginia, which qualified him -- which qualified the  
2 team -- not him, he did not participate -- which  
3 qualified his students for the State competition, which  
4 is historically held at the campus of JMU.

5 Q That's where it's historically held?

6 A To my knowledge. It may be held other  
7 places, but in -- since my arrival at the Center, it's  
8 my understanding that it's always held, because we  
9 sponsored a team this year and they went to  
10 Harrisonburg and a team last year as well.

11 Q Did your son or his school apply for  
12 funding to go to the competition in Harrisonburg?

13 A There was no real application, no, sir.

14 Q Well, how then did the Center know to pay  
15 money for your son's school to go to the competition?

16 A Each year since my arrival, when the  
17 competition is finished at Abingdon, Virginia, I  
18 congratulate each team that has qualified to move on to  
19 the State, and I tell them that if they need some help  
20 with travel, that we have sponsorship money, nongeneral  
21 fund. Most of it can come from the foundation.

22 Q That year did any other middle schools in  
23 Southwest Virginia attend the competition in  
24 Harrisburg?

25 A Yes.

22

1 Q And did the Center pay for their travel  
2 expenses?

3 A No, they did not request it.

4 I believe some of those teams, we had  
5 already given them \$1200 to sponsor their team for the  
6 year.

7 We had not done so for Virginia Middle  
8 School.

9 Q You said they did not request it;

10 correct?

11 A No one requested it, sir.

12 Q Did someone from your son's school  
13 request that the Center pay for the team's expenses?

14 A The phone call, my initial phone call  
15 came from a School Board and City Council member in  
16 Bristol, Virginia, telling me that they would split it  
17 50/50; that they had heard that we sponsored teams.

18 Q And who was that call from, sir?

19 A I believe it was a Miss Beth Rhinehart.

20 Q Are you certain?

21 A Somewhat certain, yes, sir.

22 Q Somewhat certain in the sense that you  
23 could be mistaken?

24 A I don't think I'm mistaken. I know I've  
25 had conversations with her about that because they --

23

1 they paid the other half.

2 Q Do you have a memory of Beth Rhinehart or  
3 someone else associated with your son's school  
4 requesting that the Center pay for the travel expenses?

5 A I don't think the word "request" would be  
6 the proper word there. We had conversation that they  
7 were going to pay half and they were looking for  
8 someone to step up and do the other half.

9 Q And that someone was the Center?

10 A Yes, sir, because the conversation was  
11 with me, yes, sir.

12 Q But you don't consider that to be a  
13 request; correct?

14 A No more -- I mean, it was just a verbal

Matlock dep tran

15 conversation, no different than my conversation with  
16 all the teams in attendance that day.

17 Q Did those other teams in attendance that  
18 day request that the Center pay for travel expenses?

19 A No teams that day requested I pay for  
20 travel expenses.

21 Q Or any other day that year?

22 A "Any other day that year" would not be a  
23 fair statement because the request came that -- the  
24 competition is held in December.

25 So to be truthful, the request would have<sup>24</sup>

1 been in the next year, in January.

2 Q I'm sorry. The request was the next year  
3 or the event was the next year?

4 A The event is held in December. I believe  
5 it's -- I believe it's the second weekend in December.

6 Q And are you telling us that after the  
7 event took place in December -- incidentally, what year  
8 are we talking about?

9 A I believe, sir, and I'm not certain, I'm  
10 going to say December of '16.

11 Q Are you telling us that the conversation  
12 concerning payment of the expenses did not take place  
13 until 2017, the following year?

14 A I'm saying that the receipts were not  
15 received until after the competition was over. The  
16 competition was held in December, it was Christmas  
17 break, and I believe we -- I believe we received the  
18 receipts upon their returning to school.

19 Q Did your son ask that the Center pay for

20 the travel expenses?

21 A I solicited each school. So the day of  
22 the competition in Abingdon, Virginia, I solicited each  
23 winning school.

24 Q Did your son ask that the Center pay the  
25 travel expenses?

25

1 A My son submitted the receipts after the  
2 team came back.

3 Q And did your son ask that the Center pay  
4 the travel expenses?

5 A He asked for reimbursement, yes, sir.

6 Q And did he submit the receipts to you?

7 A I believe so.

8 Q Again, is your memory clear on that?

9 A Well, I think he -- I know he submitted  
10 them to me, but I think he also submitted them to  
11 someone in the foundation's office.

12 Q Do you consider yourself to be a person  
13 with a good memory?

14 A Yes, sir.

15 Q Are there things that you remember and  
16 things that you forget?

17 A Well, I'm a human being, sir. I'm 58  
18 years old. I pride myself in having a fairly sharp  
19 mind, but some details -- you know, I don't have any  
20 information in front of me, but I believe what I've  
21 said to you to be my recall.

22 Q You believe it to be your recall?

23 A Well, yes, sir. This was investigated by  
24 OSIG, and they found it to be unsubstantiated and

25 cleared when all the documentation was provided to

26

1 them.

2 Q I was just asking you how it all went  
3 down, about your memory of it.

4 Is there any email correspondence or text  
5 messages or any correspondence whatsoever with your son  
6 concerning payment of the expenses?

7 A Well, yes, sir. I mean, he submitted --  
8 he submitted the receipts, and then I'm sure he at some  
9 point said, "Hey, we have not received a check" or  
10 something. I'm not -- that would be my recall today.

11 Q So there are emails concerning this;  
12 correct?

13 A I don't have access to my email today.  
14 Being my son, I correspond with him on a  
15 regular basis. So it could have just been a  
16 conversation.

17 Q All right. So now are you telling me  
18 that there may not be any emails concerning payment of  
19 expenses; it could have all been done by conversation?

20 A Well, there were emails. I mean,  
21 receipts were turned in.

22 Q Was that done electronically or in  
23 person?

24 A I believe it was done electronically.

25 Q And the email went to who?

27

1 A Alicia Young, I believe.

2 Q When you say you believe, is that a way

Matlock dep tran  
3 of saying you're not sure?  
4 A well, I've not seen the email. I don't  
5 have the email in front of me.  
6 Q Right.  
7 A So it would be my understanding that  
8 would be proper procedure, yes, sir.  
9 Q And were you copied on the email?  
10 A I don't remember.  
11 Q Was the email from your son?  
12 A I believe so.  
13 Q That year, did the Center offer to pay  
14 the travel expenses of any other middle school in  
15 Southwest Virginia?  
16 A I approached every team competing and  
17 congratulated them and told them if they needed  
18 assistance, that we had travel funds if we had not  
19 already sponsored their team.  
20 Q Did you do that in writing or orally or  
21 how did you do that?  
22 A Orally.  
23 Q There's no emails or writings concerning  
24 that offer; correct?  
25 A That's correct.

28

1 MR. GRIMES: Mark this, please, as 1.

2

3 (Compilation of documents: Robotics  
4 Donation Information email dated 2/2/17  
5 from Jason Matlock to David Matlock, W-9,  
6 Federal GSA Per Diem Calculator, Bristol  
7 Virginia Public Schools field trip  
documents, Quality Inn Receipts,  
restaurant receipts, Invoice to SWVHCE  
from Virginia Middle School marked as  
Exhibit Number 1)

Matlock dep tran

8 BY MR. GRIMES:  
9 Q Perhaps this will refresh your memory.  
10 A It does. It's 2017, two months later.  
11 Q I hand to you an email from Jason  
12 Matlock --  
13 And that's your son; correct?  
14 A Yes, that is correct.  
15 Q -- to you, David Matlock; correct?  
16 A That's correct.  
17 Q And it's dated February 10, 2017;  
18 correct?  
19 A That's correct.  
20 Q And there your son writes, "Attached is  
21 the original invoice expenditures with receipts and  
22 W-9. Let me know if you need anything else. Thanks,"  
23 with an exclamation point.  
24 Did I read that correctly?  
25 A Yes, sir.

29

1 Q The documents that are attached to the  
2 first page of Exhibit 1, are those the documents you  
3 received on February 10, 2017, attached to the email?  
4 A I would assume so, yes, sir.  
5 Q That would be an assumption on your part;  
6 correct?  
7 A Since I didn't produce this this morning,  
8 it would be my assumption it would be correct, yes,  
9 sir.  
10 Q Well, irrespective of whether you  
11 produced it this morning, do you have a memory of these  
12 documents being attached to the email?



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13 A I have a memory of these documents and,  
14 obviously, they were attached to the email.

15 Q Look, please, at the sixth page in this  
16 exhibit. It's a -- purports to be a hotel receipt from  
17 Quality Inn. There's a signature or an initial at the  
18 bottom of the page.

19 Do you recognize those initials?

20 A I would suspect that looks like my son's  
21 initials.

22 Q Do you recognize your son's initials or  
23 not?

24 A You know, to be honest with you, in the  
25 35 years I've known him, I don't know how many times

30

1 I've seen his initials. This may be one of the first  
2 times I've ever actually seen his initials. But that  
3 would look like something he would do.

4 Q And whoever's initials are there, it's  
5 something M 12/5/16; correct?

6 A Yes, sir. The competition took place in  
7 December.

8 Q When did the Center agree to pay your  
9 son's school's travel expenses?

10 A Well, the agreement was made -- the offer  
11 was made the day of the competition.

12 Q And that was in December of 2016;  
13 correct?

14 A The competition at the Abingdon location  
15 may have been in November. The competition in  
16 Harrisonburg was in December.

17 Q Would you recognize your son's signature?

18                   A       <sup>Matlock dep tran</sup>  
I believe so.  
19                   Q       Turn over another three pages. There  
20 appears to be a signature at the bottom of the page.  
21                               This is the page I'm focusing on  
22 (indicating).  
23                   A       That looks like his signature. His  
24 signature is on page 2 as well, it looks like.  
25                               Okay. I would say that's his signature. 31

1                   Q       Is Exhibit 1 the only email concerning  
2 the robotics competition?  
3                   A       Well, I couldn't be certain.  
4                   Q       In other words, you don't know; correct?  
5                   A       I would say that would be a fair  
6 statement, yeah.  
7                               You know, the com- -- the back-and-forth  
8 between my son and I because he's someone I see on a  
9 regular basis, I would -- you know, this could be the  
10 only one. There could be another one.  
11                               I would suspect that probably if  
12 Miss Alicia Young asked for additional documentation,  
13 we would have requested it and there would have been  
14 additional email.  
15                   Q       Are you a member of any clubs, societies,  
16 or organizations?  
17                   A       I am.  
18                   Q       Tell me the names of those organizations.  
19                   A       I'm a member of the Bristol, Virginia,  
20 Chamber of Commerce. I'm a member of the Washington  
21 County Chamber of Commerce. I'm a member of the  
22 Washington County Industrial Development Authority.

Matlock dep tran  
23 I'm a member of the Washington County Rotary Club.  
24 I think that might be the current  
25 membership.

32

1 Obviously I'm a member of my church, if  
2 you want to call that a club or organization.  
3 Q And what's the name of that church?  
4 A First Baptist Church, Damascus, Virginia.  
5 Q What's your address, incidentally?  
6 A Physical address or mailing address?  
7 Q Physical address.  
8 A  
9 Q And in what city?  
10 A  
11 Q And in what state?  
12 A Virginia.  
13 Q And what's the zip code?  
14 A I believe. I think that's  
15 correct, I don't get mail there, so -- I think  
16 that's correct.  
17 Q Have you held any offices with the  
18 Bristol, Virginia, Chamber of Commerce?  
19 A I'm on their executive board as an  
20 ex officio member representing education.  
21 Q Have you held any offices with the  
22 Washington County Chamber of Commerce?  
23 A Yes. I am the chair of their Education  
24 Committee.  
25 Q Have you held any offices with the

33

1 Washington County Rotary?

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2 A No.

3 Q And the other organization you mentioned  
4 was what?

5 A I mentioned my church.

6 Q Right.

7 And you mentioned another organization.  
8 Do you remember?

9 A Oh. IDA, Washington County Industrial  
10 Authority.

11 Q Have you held any offices with that  
12 entity?

13 A Not an office.

14 I'm also a member of the Disabled  
15 American Veterans, DAV.

16 Q Have you held any office with that  
17 organization?

18 A No. It's just a small membership. I'm a  
19 disabled veteran.

20 Q You served from when to when?

21 A 1982 to 1985.

22 Q And which branch of the service?

23 A United States Marine Corps.

24 Q And your rank at the time of discharge  
25 was what?

♀

34

1 A My discharge, I'm actually -- I'm  
2 disabled in the line of duty, E4.

3 Q And what's the nature of your disability?

4 A In a broad sense of the term, I do not  
5 have a large intestine.

6 Q And how did you suffer that disability?

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7           A     Service in the United States Marine  
8 Corps.

9           Q     Right.

10                  Could you be more specific?

11           A     We were on deployment, and I wake up in  
12 Camp LeJeune at the Naval Hospital, and it was  
13 explained to me that I had a issue with my large  
14 intestine. I had a -- it would not function like a  
15 normal person anymore.

16           Q     So it was an illness or a medical  
17 condition?

18           A     I think with the dis- -- with the  
19 Veterans Administration and Armed Forces, it's  
20 considered a disability. It would be a -- what was the  
21 two choices?

22           Q     An illness or a medical condition.

23           A     Medical condition, chronic, which led to  
24 the removal of my large intestine.

25           Q     Has that condition prohibited you from

35

1 working?

2           A     No, I've been able to work. I mean, it's  
3 a condition that I would wish on no human being and it  
4 has caused me lots of pain and struggle my entire life  
5 to where I have missed work, but...

6           Q     But the condition has not prevented you  
7 from working; correct?

8           A     No. I've chose to work.

9           Q     And -- and you're able to work?

10           A     I believe so.

11           Q     The name of your church again was what?

12 A First Baptist, Damascus, Virginia.

13 Q Have you held any offices or position  
14 with that church?

15 A I've been a Sunday school teacher,  
16 bi-vocational youth minister.

17 Q Anything else?

18 A You used the word "held"; correct?

19 Q Any other positions?

20 A Any other positions held, is that the  
21 question, sir? I'm confused.

22 Q Well, you seem to be focusing on the word  
23 "held."

24 Have you served, held, participated in  
25 any way, shape, or form whatsoever in any other

36

1 position with that church?

2 A No.

3 Q Not a trustee?

4 A We don't have trustees -- well, we do  
5 have trustees, but I'm not a trustee.

6 Now, I currently serve as a deacon.

7 Q Deacon, all right.

8 A And that was an appointment made in the  
9 last few months.

10 Q Does the church have a secretary or a  
11 treasurer or --

12 A I've never served as the secretary or  
13 treasurer, no, sir.

14 Q Does the church have a secretary or a  
15 treasurer?

16 A Yes, sir.

17 Q what about any committees?

18 A We have a committee structure.

19 Q Personnel Committee? Any committee at  
20 all?

21 A You know, maybe when I was on my 20s I  
22 served on the Van Driving Committee. I have been there  
23 a long time. I did drive the van to pick up the  
24 elderly.

25 Q what about preaching?

37

1 A I'm a youth minister, sir.

2 Q I don't know what that means.

3 Does that involve preaching?

4 A It can mean pulpit supply, yes, sir.

5 Q I don't know what "pulpit supply" means.

6 Like water or juice or what?

7 A No. That means when there is no pastor  
8 present, I may be asked to fill in to speak.

9 Q And have you done that?

10 A Oh, yes, sir. That's part of being a  
11 youth minister.

12 Q At that church?

13 A It's common throughout our association.

14 Q And what about other churches? Have you  
15 preached at other churches?

16 A I've been asked to speak. I don't know  
17 necessarily what you'd call what I do -- I'm not what  
18 you call a preacher in the sense. I'm more of a  
19 teacher.

20 So have I spoken at other churches? Yes,  
21 sir, I have spoken at other churches. I have spoken at

22 church camps.

23 Q And has all of that been on a volunteer  
24 basis?

25 A No. When I was youth minister, I was

38

1 paid a small stipend to --

2 Q To do that work?

3 A Yes, sir.

4 Q And did that work require a certain time  
5 commitment?

6 A well, the time necessary to mentor and to  
7 teach some young people.

8 Q Which takes time; correct?

9 A It can. It has its moments.

10 Q You used the word "mentor" just now.

11 A Um-hum.

12 Q Have there been persons in your life who  
13 you consider to have been your mentors?

14 A Oh, yes, sir.

15 Q Who would that be?

16 A I had a coach named Ron James.

17 Q Anybody else?

18 A I had a coach by the name of Wayne  
19 Hurley.

20 Q Anybody else?

21 A Ron Proffitt. I would consider Ron  
22 Proffitt a mentor.

23 Q Anybody else?

24 A No, sir.

25 Q Have you heard a guy -- have you heard of

39



1 a guy named Dale Cook?

2 A Yes, I know Dale Cook.

3 Q And how do you know Mr. Cook?

4 A We run together. I met Mr. Cook years  
5 ago.

6 Q When you say "run," do you mean run as  
7 for exercise?

8 A Yes, sir.

9 Q Have you told anyone at work or otherwise  
10 that Dale Cook is one of your mentors?

11 A I would not consider Dale Cook a mentor.

12 Q My question is a little different.

13 Have you ever told anyone at work or  
14 otherwise that Dale Cook was one of your mentors?

15 A I don't believe so.

16 Q In the sense you could be mistaken?

17 A Well, I could be mistaken, yes, sir.

18 Q All right.

19 A Because -- I mean, he's a friend. He's a  
20 good friend.

21 Q Do you receive church-related emails on  
22 your work email from time to time?

23 A From time to time.

24 Q Are you affiliated with a particular  
25 political party?

40

1 A No, sir.

2 Q Have you ever been affiliated with a  
3 particular political party?

4 A Yes, sir.

5                   Q       Matlock dep tran  
                  And which party?

6                   A       Both parties, if we're talking only about  
7       the Democratic Party and the Republican Party.

8                   Q       Well, there may be other parties in the  
9       United States, so let me ask: Have you been affiliated  
10      with any other political party other than the  
11      Republicans or the Democrats?

12                  A       No, those are the only two that I've had  
13      affiliation with, an association with, I guess. I'm  
14      not sure what you mean by "affiliation."

15                  Q       I guess it's like the word "held."  
16                            Have you been associated in any way,  
17      shape, or form with any political party in the  
18      United States?

19                  A       Yes, the Republicans and the Democrats  
20      both, sir.

21                  Q       At the same time or at different times?

22                  A       I guess you could say at the same time.

23                  Q       You guess you could say that?

24                  A       I would say that.

25                  Q       Have you ever told anyone at work or

41

1      otherwise that you are a Republican?

2                  A       Possibly.

3                  Q       Have you ever helped any candidate  
4      campaign?

5                  A       Yes.

6                  Q       Who most recently?

7                  A       Most recently -- I don't know if you'd  
8      call it "help."

9                            I had some signs in my yard. My wife put

Matlock dep tran  
10 some signs in the yard. But it was both parties. One  
11 of my very good friends is the Sheriff of Washington  
12 County, Democrat Fred Newman.

13 Q Have you ever helped -- and I guess I'll  
14 have to -- helped, assisted in any way, shape, or form  
15 whatsoever a Republican candidate?

16 A That's a very broad statement. I'm not  
17 quite sure how -- what you mean by that question, sir.

18 Could you help me out there?

19 Q You don't understand that question?

20 A Well, I have board members that I will  
21 see out, and they will ask me to introduce them to  
22 people.

23 Q Do you know any Republican politicians in  
24 Southwest Virginia?

25 A Yes, sir, I know Republican politicians

42

1 in Southwest Virginia.

2 Q Who?

3 A Well, I have five. Let's see. Some  
4 serve on our board.

5 So we have Senator Chafin, Senator  
6 Carrico, Delegate O'Quinn, Delegate Kilgore, Delegate  
7 Morefield and Delegate Pillion. They all serve by the  
8 Code of Virginia on my board. I have to report to  
9 them.

10 Q Would Carrico be Bill Carrico?

11 A Yes, sir, Senator Carrico.

12 Q How long have you known Mr. Carrico?

13 A I guess my first conversation where you  
14 would actually say we interacted would be in the summer

Matlock dep tran  
15 of '14 upon the arrival of President Gene Couch at the  
16 community college.

17 Q When did you arrive in Richmond for this  
18 deposition?

19 A I arrived yesterday morning.

20 (Mr. Kincer entered the room.)

21 MR. GRIMES: Let the record reflect that  
22 another person has entered the room.

23 Sir, could we have your name?

24 MR. KINCER: Lewis Kincer, Assistant  
25 Attorney General.

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1 We've met before, Mr. Grimes.

2 MR. GRIMES: Once you're seated and  
3 comfortable, let us know and we'll proceed.

4 MR. KINCER: Excuse me?

5 MR. GRIMES: Once you're seated and  
6 comfortable, let us know --

7 MR. KINCER: I'm seated and very  
8 comfortable.

9 MR. GRIMES: -- and we'll proceed.

10 MR. KINCER: Go ahead.

11 BY MR. GRIMES:

12 Q Do you recall the last question?

13 A I recall my last answer. Yesterday  
14 morning.

15 Q And are you here with your wife?

16 A No, sir. My wife is home teaching  
17 school.

18 Q And did you have dinner last night?

19 A Yes.

20                   Q       Matlock dep tran  
                      where did you have dinner?  
21                   A       The Cheesecake Factory.  
22                   Q       who were you with?  
23                   A       All by myself. All my friends showed up.  
24                   Q       Have you met with anyone since you've  
25   been in Richmond? Other than counsel.

44

1                   A       Are you asking have I met with any of  
2   those board members?  
3                   Q       No, I used the word "anyone," actually.  
4                   A       Oh, yes, sir. I met the waitress at the  
5   restaurant last night. She was quite nice. I met -- I  
6   bought some underwear at Dick's Sporting Goods. I met  
7   the cashier there. I met a young lady in the  
8   Pocahontas building that helped me find my way how to  
9   get out.  
10                    very limited contact yesterday.  
11                   Q       Anybody else?  
12                   A       There was a young lady, I don't recall  
13   her name, that I left -- I stopped by to see if any --  
14   I have two bills, budget amendments. I went to check  
15   on two budget amendments, and I left a note for one of  
16   my patrons.  
17                   Q       Have you met with any board members?  
18                   A       No, sir.  
19                   Q       Have you spoken with any board members?  
20                   A       No, sir.  
21                   Q       Since you got here?  
22                   A       No, sir.  
23                   Q       When have you last spoken with Bill  
24   Carrico?

25                   A           Matlock dep tran  
I guess -- I believe it was at the board 45

1   meeting in December.

2                   Q           Was that in Abingdon?

3                   A           Yes, sir.

4                   Q           Do you serve on any boards or hold any  
5   offices in any organizations other than the ones you  
6   mentioned moments ago?

7                   A           No, those are the only public  
8   organizations that I -- those are the only public  
9   organizations, sir.

10                  Q           Well, what about private organizations?

11                  A           Oh. Now, my wife and I, we have a  
12   foundation.

13                  Q           Um-hum. And what's the name of that  
14   foundation?

15                  A           Justin Foundation.

16                  Q           J-u-s-t-i-n?

17                  A           J-u-s -- yes, sir.

18                  Q           And what is your affiliation with the  
19   Justin Foundation?

20                  A           I guess you could call me the creator.

21                  Q           And when did you create the Justin  
22   Foundation?

23                  A           I'm going to say somewhere around 2003  
24   maybe.

25                  Q           What is your position with the Justin 46

1   Foundation?

2                   A           Oh, I'm a board member.

3                   Q           Who are the other members of the board?

4           A     I don't have that list in front of me,  
5   sir. It's quite -- I think we have 20 board members.  
6           Q     Is there an executive director?  
7           A     We have a president, yes, sir.  
8           Q     Who is the president?  
9           A     Her name is April.  
10          Q     Does April have a last name?  
11          A     Yes. April Hamby Crabtree.  
12          Q     April what?  
13          A     Hamby Crabtree.  
14          Q     Any other officers?  
15          A     The vice president would be --  
16          Q     Do you remember?  
17          A     I'd have to -- I'd have to call. We have  
18   a vice -- we have a vice president, a secretary and a  
19   treasurer.  
20          Q     You don't remember who those people  
21   currently are?  
22          A     I currently serve as treasurer.  
23          Q     Why did you create the Justin Foundation?  
24          A     To work with at-risk kids in our  
25   community.

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1                   Justin was a friend of my son's, and he  
2   died of a drug overdose at an early age while he was a  
3   student at the community college. And Justin had a  
4   learning disability. He didn't read very well.

5                   And so I actually did his funeral. And  
6   coming home from the funeral, I told my wife that we  
7   needed to make people in our community more aware of  
8   maybe our little poor community, zip code 23426, which

9 is Damascus, so I thought we could maybe raise some  
10 funds to help the reading program at the elementary  
11 school and also raise some funds to help at the middle  
12 school and the high school.

13 Q Does that foundation administer money?

14 A Yes, sir.

15 Q Does it receive money?

16 A Yes, sir.

17 Q From what sources?

18 A Oh, we have a little auction at the  
19 elementary school every year. From time to time we've  
20 had a 5K race.

21 Receipts are usually \$20,000 or less for  
22 the year, somewhere in that neighborhood. It's a  
23 small, very small foundation.

24 Q Does the foundation have a bank account?

25 A Yes.

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1 Q Does it have a checking account?

2 A Yes.

3 Q Are you authorized to sign checks for  
4 that foundation?

5 A Yes.

6 Q Is anyone else authorized to sign checks  
7 for that foundation?

8 A Yes.

9 Q Who is that?

10 A I believe Miss Crabtree is and I'm  
11 certain whoever the secretary and treasurer -- it takes  
12 two signatures -- whoever the other two officers are.

13 Q Do you serve as an officer or director of



14 any other organizations?

15 A I don't believe so, sir.

16 Q Have you since January 1 of 2015 served  
17 as an officer or a director of any other organizations?

18 A I don't believe so -- oh, wait, no.  
19 There is another organization.

20 I serve as a volunteer, yes, sir, for  
21 United Federal Southeast Credit Union. I'm a -- I am a  
22 board member for that credit union.

23 Q You have served in that capacity for how  
24 long, approximately?

25 A Approximately six years.

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1 Q Since January 1 of 2015, have you served  
2 as an officer or director of any other organization?

3 A I don't believe so.

4 Q And would you remember that if you had?

5 A I would like to think I would. I mean,  
6 I'm trying -- I'm running through my mind right now of  
7 all my, my volunteer service in the community.

8 Q You mentioned officiating at a funeral  
9 just a moment ago; correct?

10 A Um-hum.

11 Q Have you officiated at other funerals  
12 through the years in your ministerial capacity or  
13 otherwise?

14 A Yes, sir.

15 Q Is that part of your ministerial duties?

16 A I would call it part of my friendship  
17 duties. I mean, I would -- to conduct a funeral, you  
18 don't have to be a minister.

19 Q Right.

20 A But I have people who -- that I have  
21 loved, and so, yes, I've done other funerals.

22 I do -- I did think of another committee.

23 You used the word -- the term "since  
24 2015"; is that correct? I wanted to make sure that we  
25 get everything correct as far as committee and

50

1 organizations.

2 By virtue of being the agency, the  
3 Southwest Virginia Higher Education Center, I'm  
4 ex officio on the -- there's a Heartwood board.

5 Q What is the Heartwood board?

6 A Heartwood is an organization that  
7 oversees -- there's a building on our campus, a  
8 tourist, a regional effort to make people aware of the  
9 artisans and our music heritage.

10 And so Miss Fowlkes before me served on  
11 that board. And so whoever holds the agency head of  
12 the Southwest Virginia Higher Education Center is  
13 listed as an ex officio member.

14 Q Would Fowlkes be Rachel Fowlkes?

15 A Yes, Dr. Rachel Fowlkes.

16 Q Formerly the executive director of the  
17 Center?

18 A Yes, sir.

19 Q Have you served since January 1 of 2015  
20 as an officer or director of any other organizations?  
21 Just take a moment to think.

22 A I don't recall any at this time.

23 Q It may be that something else comes to

24 mind as we're sitting here. If so, would you let me  
25 know?

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1 A Of course.

2 Q Other than what you've told us this  
3 morning, today, do you have any other hobbies or  
4 interests outside of work?

5 A My grandchildren.

6 Q Any others?

7 A We've talked about church, we've talked  
8 about giving back to the community, I run. No, sir.

9 Q Was Senator Carrico involved in any way,  
10 shape, or form with your being hired as executive  
11 director of the Center?

12 A I don't believe so. He didn't serve on  
13 the Search Committee and he wasn't chairman during the  
14 process, so I -- I'm not aware of -- if he did.

15 Q Do you know whether he recommended that  
16 you be hired as the executive director?

17 A No, sir.

18 Q You don't know that?

19 A No, sir.

20 Q After you came to the Center, didn't  
21 Senator Carrico get you a reserved GOP tag for your  
22 vehicle?

23 MR. KINCER: Excuse me. What is a  
24 reserved GOP tag?

25

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1 BY MR. GRIMES:

2                   Matlock dep tran  
Q       would you answer the question?  
3           A       I'm not sure what -- what -- I would have  
4   to -- what do you mean by "reserved GOP tag"?  
5                   MR. GRIMES:  Objection to the speaking  
6   objection, counsel.  I ask that you refrain from doing  
7   that in the future.  He has just parroted your  
8   question.  
9                   MR. KINCER:  No, I think he was as  
10  perplexed as I was, Mr. Grimes.  
11                  MR. GRIMES:  No more speaking objection,  
12  counsel.  
13                  MR. KINCER:  Just explain to the witness  
14  what you're asking him.  
15                  MR. GRIMES:  The next time that happens,  
16  we'll have a conference call with the Court, counsel.  
17                  MR. KINCER:  That's fine.  I'm available.  
18  BY MR. GRIMES:  
19           Q       After you came to the Center, did you get  
20  a GOP tag?  
21           A       I have a tag that says G I believe 58.  
22           Q       It says G58?  
23           A       I believe so, yes, sir.  
24           Q       What does that mean?  
25           A       Well, it was kind of a joke between me

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1   and my wife.  We -- it was a joke that we would -- you  
2   know, I work for the Governor.  So it has a big G on  
3   it.  I think I got that last year.  And so I was  
4   getting ready to turn 58.  
5           Q       So your tag has three characters on it, a  
6   G and a 5 and an 8?

7                   A       Matlock dep tran  
I believe it's 58. I've been mistaken  
8 before.  
9                   Q       Do you not know what your license plate  
10 says?  
11                  A       I believe it says G58.  
12                  Q       Was there a time when you had a GOP tag  
13 for your vehicle?  
14                  A       Like a campaign? Like a campaign tag?  
15 I've never put a campaign sticker on any of my vehicles  
16 ever at any time in my life, for either party, even  
17 when I was campaigning for the other party. I never  
18 put a campaign sticker. That's -- I wouldn't make my,  
19 my preferences known to the public.  
20                  Q       When did you get your G58 tag?  
21                           MR. HARDY: Asked and answered.  
22 BY MR. GRIMES:  
23                  Q       What was your answer?  
24                  A       I believe it was at some point during the  
25 year 2017.

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1                  Q       Did you have any tags or license plates  
2 that indicated your party affiliation in 2016, 2017, or  
3 2018?  
4                  A       I had that G tag. That's the only tag  
5 I've ever had that --  
6                  Q       And you say the G stands for governor;  
7 correct?  
8                  A       That's what I tell my friends.  
9                  Q       What's the truth?  
10                 A       I'm not certain. I just saw it and --  
11 and I asked someone, "How do you get one of those?" and

Matlock dep tran  
12 they said, "You have to fill out a D -- Department --  
13 DMV application."

14 Q What does the G stand for?

15 A I have no idea.

16 I like to tell people it stands for  
17 governor because, you know, I'm an agency head. So I  
18 guess there's a little ego there.

19 Q Have you disposed of or gotten rid of any  
20 tags or license plates in 2016, '17 or '18?

21 A I believe it's when you trade vehicles  
22 in, you don't transfer the tags; you have to turn those  
23 back in.

24 Q In 2016, '17 or '18, was there any  
25 indication or writing on any of your vehicles that you 55

1 were affiliated with the Republican Party?

2 A No. I never -- I never put writings or  
3 bumper stickers or anything on my vehicle.

4 Q Do you hold any licenses other than a  
5 driver's license?

6 A Well, I have a license as an ordained  
7 minister. You can't marry people in Virginia without a  
8 license to do that.

9 Q And do you have a license to marry  
10 people?

11 A Yes.

12 Q And do you officiate over marriage  
13 ceremonies from time to time?

14 A Yes..

15 Q And that license is from one of the  
16 churches?

17 A Matlock dep tran  
No, sir.

18 Q From?

19 A That license is from Washington County,  
20 Virginia.

21 Q Do you hold any other licenses?

22 A No, sir. I think that's the only two. I  
23 have a driver's license, and I don't think -- I don't  
24 think anything else I do in life requires a license.

25 Q Have you ever been arrested?

56

1 A No, sir.

2 Q Have you ever been a party to any  
3 litigation?

4 A I don't believe so.

5 Q Let me ask about your education.

6 Did you go to college?

7 A Yes, sir.

8 Q Where did you go to college?

9 A Oh, I went to -- I did dual enrollment at  
10 Southeast Missouri State University as a school, high  
11 school student. I attended Mississippi State  
12 University and Southern Illinois University.

13 Q Did you obtain an undergraduate degree?

14 A Yes, sir.

15 Q From what university?

16 A The undergraduate degree is from Southern  
17 Illinois University.

18 Q When did you get that degree?

19 A 1980- -- I'll say '85 today. I'll have  
20 to check.

21 Q You don't remember?

22 A Matlock dep tran  
No, sir.

23 Q And your degree was in what?

24 A Management.

25 Q Business management?

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1 A Yes, sir.

2 Q Do you have any other formal education?

3 A Yes, sir.

4 Q Do you have any other degrees?

5 A Yes, sir.

6 Q What degrees?

7 A I have a master's degree in counseling.

8 Q Would that be an MS or an MA?

9 A It would be an MED.

10 Q I couldn't hear you.

11 A An MED.

12 Q From where?

13 A East Tennessee University.

14 Q When did you get that degree?

15 A I believe 1995.

16 Q Are you not certain?

17 A I'm fairly certain.

18 Q Do you have any other degrees?

19 A Formal degrees, no, sir.

20 Q Do you have any other informal degrees?

21 A I have graduate certificates.

22 Q Are you working toward your Ph.D.?

23 A I was.

24 Q At what institution?

25 A East Tennessee State University.

58



1 Q Are you no longer working towards your  
2 Ph.D.?

3 A I placed that on hold.

4 Q And why did you do that?

5 A In the last four years of my life, I've  
6 had four major surgeries.

7 Q So for medical reasons?

8 A Yes, sir.

9 Q You were working toward a degree in what?

10 A Higher education administration.

11 Q Was it a requirement to have a Ph.D. to  
12 become the executive director for the Southwest  
13 Virginia Higher Education Center?

14 A No, sir.

15 Q Would you agree that not having a  
16 doctorate closed some doors for the executive director  
17 of the Center?

18 A No, sir, I wouldn't agree with that.

19 Q Did your predecessor have a Ph.D.?

20 A Yes, sir, she did.

21 Q And how long did she serve as the  
22 executive director of the Center?

23 A For its history.

24 Q And the history began when?

25 A I believe they were created by the Code

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1 of Virginia in 1992.

2 Q And when did the Southwest Virginia  
3 Higher Education Center start functioning?

4 A I believe when they were created by Code  
5 in 1992.

6 Q Was the Southwest Virginia Education  
7 Center, which I'll refer to as the Center throughout  
8 this deposition from time to time, the first such  
9 center in the State of Virginia?

10 A It's my understanding that, yes, it was.

11 Q Are there other similar centers now in  
12 Virginia?

13 A Yes, there are.

14 Q Where are they?

15 A There is an agency in Danville -- it's  
16 not Danville. It's Martinsville. It's called the  
17 New College Institute. Then there's the Southern  
18 Virginia Higher Education Center. That's a State  
19 agency.

20 There's only three -- to my knowledge,  
21 there's only three agencies.

22 Q Is there a Higher Education Center there  
23 by Hotel Roanoke in Roanoke?

24 A That's an authority owned by the county  
25 and the, I guess the municipalities there.

60

1 Q What does the Southwest Virginia Higher  
2 Education Center do?

3 A We're in the opportunity business.

4 Q So it sells or creates opportunity?

5 A Provides opportunity, would be the way I  
6 would like to phrase it. We're about changing people's  
7 lives from kindergarten to career.

8 Q So it changes lives?

9 A I believe so, yes, sir.

10 Q How does the Southwest Virginia Higher

11 Education Center relate to the Higher Ed. Centers in  
12 Virginia, if at all?

13 A Relate as in -- could you -- what do you  
14 mean by "relate"? Help me out there, sir.

15 Q Does the Southwest Virginia Higher  
16 Education Center have any relation, relationship to the  
17 other Higher Ed. Centers in Virginia?

18 A We have a quarterly conference call we  
19 have with each other. We kind of just peer to peer  
20 bounce things off.

21 Q And do you have quarterly telephone calls  
22 with the executive directors of the other higher  
23 education centers in Virginia?

24 A Yes, sir, that was my reference there.

25 Q There's also something called the

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1 Southwest Virginia Higher Education Center Foundation;  
2 is that correct?

3 A Yes, sir, that's correct.

4 Q When was that created?

5 A I don't know.

6 Q Before or after the Center?

7 A Oh, after the Center.

8 Q What is the relationship between the  
9 Foundation and the Center?

10 A The sole purpose of the Southwest  
11 Virginia Higher Education Center is to raise funds to  
12 support the activities of the Southwest Virginia Higher  
13 Education Center, as stated in their bylaws.

14 Q Do you have any responsibility with  
15 respect to the Foundation?

16 A The executive director of the Center is  
17 an ex officio member of the Foundation board.

18 Q What does that mean "ex officio"?

19 A It means I attend the meetings and speak  
20 when spoken to when they ask for advice and provide  
21 guidance when asked.

22 Q Does the Foundation have any employees?

23 A The Foundation does not have its own  
24 employees. There is an MOU in place between the Center  
25 and the Foundation where the -- we have -- for work

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1 that is done on behalf of the Foundation by a center  
2 employee, there's a percentage that's paid back yearly  
3 to the Center.

4 Q Has anyone associated with the Center,  
5 any member of the board of directors or any officers,  
6 ever said to you that you could not do any of your  
7 church work while working for the Center?

8 A No. I wouldn't do church work -- I mean,  
9 no, no one has said that to me.

10 Q Or that you could not serve as an officer  
11 or director of any of the other organizations you  
12 mentioned earlier while working for the Center?

13 A No.

14 Q Where did you work just prior to going to  
15 work for the Center?

16 A Virginia Community College System,  
17 Virginia Highlands Community College.

18 Q And your position there was what?

19 A My position there was vice president.

20 Q Overseeing some particular aspect of the

21 organization?

22 A Yes, sir, marketing, alumni relations,  
23 institutional advancement, institutional research were  
24 probably the four broad categories.

25 Q When did you go to work for the Virginia 63

1 Highlands Community College?

2 A In January of 1992.

3 Q And you worked there until when?

4 A November 2nd of 2015.

5 Q And you started at the Center when?

6 A November 2nd, 2015.

7 Q Did your job at the community college  
8 require that you interact with the Center in any way?

9 A Of course.

10 Q In what way?

11 A Well, the colleges that are there, UVA  
12 wise primarily, offer stackable credentials, so it was  
13 important that we would align our programs at the  
14 community college with the programs being offered by  
15 UVA wise so that our students had a clear pathway to  
16 the world of work.

17 Q How is the college related to the Center?  
18 Is it just the way you've told me?

19 A What I've told you is partially true -- I  
20 mean, it is true, but I don't think that that's the  
21 whole way that they are related.

22 They have a seat on the board, a voting  
23 member of the board. They donated the land. The  
24 Virginia Community College System donated the land.

25 Q To build the Center?

1 A Yes, sir.

2 Q why did you leave the college?

3 A Opportunity. I loved my job at the  
4 Virginia Highlands Community College.

5 Q What do you mean "opportunity"? Better  
6 opportunity?

7 A I had been there 25 years, and when I  
8 looked at my legacy in life, I thought this was -- made  
9 a very nice logical step to make a difference in the  
10 lives of the people in our community.

11 Q What was your rate of pay when you left  
12 the college?

13 A I believe at that time, somewhere around  
14 \$110,000.

15 Q What's your rate of pay when you started  
16 at the Center?

17 A I believe it was \$130,000.

18 Q So more money; correct?

19 A There was an increase in pay because of  
20 the increase in responsibility, yes, sir, but that's --  
21 I didn't leave because of money.

22 Q How did you learn about the opening at  
23 the Center for executive director?

24 A Well, it -- we sit on the same campus.

25 Miss Fowlkes attended the board members -- the board

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1 meetings for their community college, and she announced  
2 her retirement at one of our board meetings.

3 Q Dr. Fowlkes retired in or about June of

4 2015; correct?

5 A I believe it would probably be June 30th  
6 of 2015, yes, sir.

7 Q On that your memory is perfectly clear;  
8 correct?

9 A I believe that's true. I have not seen  
10 her retirement paperwork. I didn't track that down. I  
11 just -- I just kind of from 28 years of service in the  
12 Commonwealth, this kind -- the end of the fiscal year  
13 is kind of a point in which a lot of things happen.

14 Q Did you ever talk with Senator Carrico  
15 about your interest in becoming executive director of  
16 the Center?

17 A I don't believe so.

18 Q Are you certain of your answer?

19 A (No response).

20 Q Are you certain of your answer?

21 A I'm trying to relive conversations that I  
22 may or may not have had.

23 I'm not sure why I would have contacted  
24 Senator Carrico.

25 I do recall having a conversation with

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1 then chairman of the Search Committee, Democrat  
2 Senator -- it slips me -- to find out what the  
3 application process was.

4 So I can't say yes or no today. I -- on  
5 some reflection, I'll think on it as the day goes,  
6 because I had several conversations, I mean, as anyone  
7 might when you go to apply for a job; you let people  
8 know that you're interested. I'm trying to think who

Matlock dep tran  
9 all I said that to.  
10 I kept it quiet because I didn't want --  
11 I didn't want anyone to know because I loved my job as  
12 vice president of the community college and we had a  
13 brand new president, and I didn't want him to perceive  
14 that as not being loyal to him. So I didn't apply  
15 until a few minutes before midnight on the date on  
16 which the application deadline occurred.

17 Q Prior to the time you were hired as  
18 executive director of the Center, did you have any  
19 conversations with Senator Carrico about your interest  
20 in the executive director position?

21 A Prior to the date I was hired, that would  
22 be a correct statement.

23 Q It was actually a question.

24 A Okay. So that question, yes, sir, the  
25 answer would be yes.

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1 Q When did you first have a conversation  
2 with Senator Carrico about your interest in the  
3 executive director position?

4 A That I don't know, sir.

5 I do know I had conversations with him in  
6 September before the job was offered to me, and that  
7 had mostly to do with salary negotiation.

8 Q When was the job offered to you?

9 A I believe, and I didn't write this one  
10 down, October 2nd, October 3rd.

11 Q Of?

12 A 2015.

13 Q How many applicants were there for the



Matlock dep tran

14 job?

15 A I have no knowledge, sir. It would be a  
16 guess on my behalf based on hearsay. I didn't see -- I  
17 wasn't privy to the applicant pool.

18 Q Do you know who any of the other  
19 applicants for the job were?

20 A Yes, because it was made known who the  
21 final six candidates were.

22 Q Who were they?

23 A Mr. Duffy Carmack was in the final six,  
24 Miss Cheryl Carrico was in the final six,  
25 Miss Leanna -- I can't think of Leanna's last name.

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1 She's the executive director at the New College  
2 Institute -- was in the final six, myself, and I don't  
3 know who the other two were. I think it was a lady  
4 from Michigan. I'm not certain. No one ever handed me  
5 that list.

6 Those were just names that I was familiar  
7 with because I had awareness of those people.

8 Q Did anyone ever tell you why you were  
9 chosen for the job?

10 A I believe that when the job was offered  
11 to me, members of the selection committee told me I was  
12 selected because I was the best candidate.

13 Q You believe that or you're certain of it?

14 A Oh, I'm certain they told me based on my  
15 25 years of experience, my dedication to the community,  
16 my knowledge of educational programs, my relationship  
17 with all the other colleges, that I was the best  
18 candidate.

Matlock dep tran  
19 Q And that's precisely what the members of  
20 the selection committee told you?

21 A No, not precisely because it's been quite  
22 some time. I'm just giving you a broad remembrance of  
23 what my ego remembers.

24 It was a very competitive process. There  
25 was a lot of very highly qualified candidates. So

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1 obviously I had to be highly qualified.

2 Q Do you know a Richard Leigh?

3 A Yeah. He's a very good friend.

4 Q Who is that?

5 A Richard Leigh is a song writer.

6 Q From?

7 A Nashville now, sir.

8 Q That's where he lives, isn't it?

9 A No, sir, he lives in Crossville,  
10 Tennessee.

11 Q Where is he from?

12 A I believe right here in Richmond  
13 originally. He -- he had five mothers and like four  
14 daddies. He was in and out of foster care. So I think  
15 when his parents were killed, he was from  
16 Washington, D.C.

17 Q Did he ever live in Southwest Virginia?

18 A Yes, sir. He's a graduate. Yes, sir, he  
19 did.

20 Q Now you remember he's lived in Southwest  
21 Virginia?

22 A But he's not from there. Your question  
23 was where was he from.

24                   Q       Matlock dep tran  
25                   Did he live there for a while, Southwest 70

1       Virginia?

2                   A       He was a student at Virginia Highlands  
3       Community College.

4                   Q       Have you ever described him as your best  
5       bud?

6                   A       I've probably described him as my best  
7       friend. "Bud" is not a word I would normally use in my  
8       vocabulary. He likes to use the word "bud" all the  
9       time and I may have replied to him, but I don't know if  
10      I would ever say, "Everyone, please meet my best bud."  
11                   He is probably one of my best friends in  
12      life.

13                   MR. GRIMES: Mark this as 2, please.

14                   (1.10.18 email from Laura Pennington to  
15                   David Matlock re: Richard Leigh - 2018  
                 Festival marked as Exhibit Number 2)

16      BY MR. GRIMES:

17                   Q       At the top of the page is an email from a  
18      Laura Pennington to you dated January 10, 2018;  
19      correct?

20                   A       That's correct.

21                   Q       There she writes, "David, know you are  
22      beyond busy, so just wanted to thank you in advance for  
23      giving me a call as soon as you know Richard will be  
24      swinging through town. I'm looking forward to you  
25      introducing me to your best bud."

1                   Did you tell Laura Pennington that  
2      Richard Leigh was your best bud?

3           A       I probably referred to Richard Leigh as  
4 my best friend. I don't know if in my entire life I've  
5 ever referred to anybody as my "best bud." Again, that  
6 would be -- that would be unique to my vocabulary.

7                    Could I have? Maybe.

8                    But that, normally, no, sir. I would say  
9 no.

10                   would I say he's my best friend? He's a  
11 very good friend, yes, sir.

12           Q       Are you Richard Leigh's key man?

13           A       Richard likes to refer to me as his key  
14 man.

15           Q       Are you his acting agent?

16           A       In a -- I guess in a 40,000 foot  
17 approach, he will say that from time to time. And  
18 he'll ask me to speak to people on his behalf, which  
19 could be implied that I might be an agent for him.

20                    But best friend? Yes, he's probably one  
21 of my top three friends of my entire life.

22           Q       Have you ever told anyone that you are  
23 Richard Leigh's key man?

24           A       I have probably used the word "key man"  
25 in describing my relationship with Richard Leigh.

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1           Q       Is that a yes?

2           A       That would be a maybe because I don't  
3 know if I would ever say, "Hey, I'm his key man." I  
4 might say, "I'm acting as his key man," which --

5           Q       Have you --

6           A       -- which has a different meaning in  
7 Nashville.

8 Q Have you ever told anyone that you are  
9 Richard Leigh's acting agent?

10 A I may have.

11 Q Is that your answer?

12 A Yes, sir.

13 Q Is that true?

14 A I believe it to be true.

15 Q Irrespective of your belief, is it true?

16 A I have acted as an agent for Richard  
17 Leigh in a very broad sense of the words, but to  
18 introduce myself and say that, probably -- probably  
19 not.

20 Q An agent helps a performer get work;  
21 correct? That's what an agent does, isn't it?

22 A Yes. And that's kind of why I use that  
23 term loosely, because I never really helped him get  
24 work. I would help him transition with the work.

25 Richard does not like to be called by 20,  
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1 30, 40 people. He only wants to talk to one person  
2 when he comes to the town.

3 And since I'm his best friend, when he  
4 comes to Abingdon, he really only wants to talk to me.  
5 He doesn't want, you know, somebody calling him about  
6 what kind of wine do you want in your refrigerator or  
7 what time do you want to be picked up or this is what  
8 you're going to wear.

9 MR. GRIMES: Mark that, please, 3.

10 (8/30/17 email from Olivia Denton to  
11 David Matlock re: request for Richard  
12 Leigh Mailing Address marked as Matlock  
Exhibit Number 3)

13 BY MR. GRIMES:

14 Q Exhibit 3, if you look at the second  
15 email down the page, is an email from you to Olivia  
16 Denton; correct?

17 A Second email from me to Olivia -- okay.

18 Q Correct?

19 A Yes.

20 Q And there you write, concerning Richard  
21 Leigh, as his, quote, key man, closed quote, and acting  
22 agent.

23 Do you see that?

24 A Um-hum.

25 Q Does that refresh your memory about

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1 whether you've told anyone that you are Richard Leigh's  
2 key man and acting agent?

3 A Oh, yeah, I said it here, obviously.

4 Q Did you start the annual fundraiser at  
5 the college involving Richard Leigh?

6 A Yes. Well, it was a team of people. It  
7 just wasn't me. It was a team of people.

8 Q Where did you work prior to the college?

9 A Prior to my career in 1991/1992 with the  
10 community college?

11 Q Yes, sir.

12 A My job -- my, I guess, public job would  
13 have been I was in the manufactured housing business.

14 Q Working for whom?

15 A Oh, no. I was in the banking business.  
16 I'm sorry. I was a banker.

17 Q You were a banker working for which bank?

Matlock dep tran

18 A Central Fidelity Bank.

19 Q From when to when?

20 A It was in the fall -- it would have been  
21 in the fall of '91, because the Dean of Students was a  
22 customer, and he made me aware of a job that I applied  
23 for in January of '92 -- or I applied for it in the  
24 fall of '91.

25 Q You started work with Central Fidelity in 75

1 the fall of '91?

2 A It could have been the summer. It was  
3 late summer, early fall.

4 Q And you worked there until when?

5 A Until I took the job at Virginia  
6 Highlands Community College.

7 Q And that was when?

8 A January -- beginning of the semester in  
9 January of '92.

10 Q So you were at the bank for three or four  
11 months?

12 A Thereabouts, I would say, yeah.

13 Q What was your job at the bank?

14 A I was in a management trainee program.

15 Q Did you leave the bank for a better  
16 opportunity?

17 A If you're using the term "opportunity"  
18 as you did earlier, by money, the answer is no, because  
19 I took a pay in cut when I went to the college.

20 Did I take it because I felt like I could  
21 make a better difference in the world? That's why I  
22 chose the community college.

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23 Q Did you perceive it to be a better  
24 opportunity?

25 A I perceived it as it fit my personality

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1 better, yes, sir.

2 Q Did you perceive it as a better  
3 opportunity?

4 A I would say so.

5 Q Prior to the bank, where did you work?

6 A I was self-employed and employed in the  
7 manufactured housing industry.

8 Q Did you have a company?

9 A I worked for the Connor Corporation.

10 Q You also said you were self-employed;  
11 correct?

12 A I just did some freelance -- freelance  
13 advising.

14 Q Advising on what?

15 A Value of homes.

16 Q Manufactured housing?

17 A Yes, sir.

18 Q Is that mobile homes or prefabricated  
19 homes or what?

20 A All of the -- all of those.

21 Q And when did you go to work in the  
22 manufactured housing business?

23 A Oh -- upon my discharge of being fully --  
24 you know, my disability with the Marine Corps, which  
25 would have been the summer or late fall -- late summer,

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Matlock dep tran  
1 early fall of '90- -- of '85, I believe, sir.  
2 Q Until when?  
3 A Until my employment with Central Fidelity  
4 Bank.  
5 Q In the summer or fall of 1991?  
6 A Thereabouts, yes, sir. I took -- I took  
7 about a year and a half off. My colon issue  
8 hospitalized me and I couldn't work and I was extremely  
9 sick and I had to draw long-term disability. I was  
10 unable to work.  
11 Q From?  
12 A The gap between the manufactured housing  
13 business and the bank.  
14 Q Your long-term disability was from --  
15 from whom? An insurance carrier, a company?  
16 A Yes, sir.  
17 Q Social Security Administration or who?  
18 A No. An insurance company.  
19 Q And you were out of work for about a year  
20 and a half?  
21 A Somewhere around there, yes, sir.  
22 Q But you're able to run now; correct?  
23 A Yes, sir. I had major surgeries to try  
24 to get control of my -- at that time I was in terrible  
25 shape.

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1 Q what's a typical training distance for  
2 you?  
3 A My typical training distance is 3 miles.  
4 Q And have you run 5Ks?  
5 A Oh, yes, sir.

6                   Q       Matlock dep tran  
                  10Ks?  
7                   A       Not a 10K.  
8                   MR. HARDY: We've been going for about an  
9   hour and a half.  
10                  MR. GRIMES: Take a break?  
11                  MR. HARDY: Yes.  
12                  MR. GRIMES: Do you need a break?  
13                  MR. HARDY: I do.  
14                  THE WITNESS: Yes, sir.  
15                  MR. GRIMES: All right.  
16                  (A recess was taken from 10:44 a.m. until  
17                  10:57 a.m.)  
18                  MR. GRIMES: Back on the record.

19 BY MR. GRIMES:

20                  Q       You told us earlier, Mr. Matlock, that  
21   "G" stands for governor; is that correct?  
22                  A       That's what I tell my friends. It's kind  
23   of an ego thing. You know, you became an agency head  
24   and in a small town, just as a joke with some of my  
25   friends, you know, I thought -- I had seen the G plate,

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1   and so I thought how cool would it be, being an agency  
2   head, if I had a G plate.

3                   And you could ask several of my friends,  
4   and they would tell you I told them it stood for  
5   governor.

6                  Q       Have you told any people at work or any  
7   of your friends that the G stands for GOP, the Grand  
8   Old Party?

9                  A       No.

10                 Q       Do you deny that you've told anyone that

Matlock dep tran  
11 the G on your license plate stands for GOP, the Grand  
12 Old Party?

13 A I don't believe I've ever said that.

14 Q Do you deny it?

15 A I don't believe I've ever said it.

16 Q So is it possible you've said that?

17 A I don't think I would.

18 Q Is it possible?

19 A I think all things are possible, but  
20 that's just not -- that's just not -- I don't think I  
21 would ever do that.

22 Q Is your memory clear on that point?

23 A I believe it is.

24 Q As clear as on everything else you've  
25 testified here on today?

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1 A (Nodding).

2 THE COURT REPORTER: I'm sorry. Did you  
3 answer?

4 THE WITNESS: Yes. Yes.

5 BY MR. GRIMES:

6 Q Have you ever been fired or resigned or  
7 asked to resign from any job?

8 A No, sir.

9 Q Have you ever been disciplined at any  
10 job?

11 A No, sir.

12 Q Who did you interview with prior to  
13 starting work at the Center?

14 A There was a selection committee. There  
15 were two, three, possibly four interviews in the

16 process.

17 Q With different people on the committee  
18 each time?

19 A The actual selection committee, the full  
20 selection committee, I believe there were two  
21 interviews behind closed doors in which they were in  
22 charge of the process and a third in which they -- it  
23 was heavily skewed toward them.

24 Q What does that mean?

25 A There were two closed door full

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1 interviews like you would do for most employees in a  
2 selection process.

3 Then there was a day in which I was at  
4 the Center from like nine in the morning until eight in  
5 the evening and it ended with a dinner that was hosted  
6 by all board members who wanted to attend by the  
7 selection committee, and there were informal questions  
8 and answers, giving me an opportunity to interact with  
9 the full board with the selection committee observing.

10 Q Were the selection committee members not  
11 members of the board?

12 A No, sir. The -- it's my understanding  
13 that the selection committee contained a cross-section  
14 of people. I don't think they -- I don't believe they  
15 were all board members.

16 Q Who were members of the selection  
17 committee?

18 A There was a representative from UVA Wise  
19 there. There was a representative from Radford there.  
20 There was representatives from the Foundation there.

Matlock dep tran  
21 There was a representative from VCU. I'm not sure who  
22 some of the people represented. It was very -- a very  
23 broad committee. I think there was about maybe 15  
24 people, would be my guess.

25 Q When were you first told that you had

82

1 been selected?

2 A The official announcement came -- it may  
3 have come the evening after the board meeting.

4 Again, October 2nd, 3rd, 4th, somewhere  
5 in there there was a board meeting. Early October  
6 there was a board meeting in which they voted. I  
7 believe I received a phone call that evening.

8 Q From who?

9 A At that time the chairman of the board,  
10 not the selection committee, but the chairman of the  
11 board at that time was Senator Carrico. He had just  
12 assumed the role I think as chairman at some point.

13 Q So Senator Carrico told -- called you and  
14 told you you had the job, isn't that what you just  
15 said?

16 A That's what I just said. I'm trying to  
17 make sure. I want to be accurate here.

18 I know that there was a phone call where  
19 Senator Carrico called to arrange a meeting to  
20 negotiate the salary.

21 The first call, the very first call may  
22 have come from the HR liaison, Miss Joyce Brooks.

23 Q I'm not asking you to guess.

24 A Yeah.

25 Q Are you guessing?

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1           A     I'm trying to remember. It would be one  
2 of those two.

3                     But, yeah, I got a phone call from both  
4 of those people. The sequence is a little vague. I  
5 don't remember the exact sequence, sir.

6           Q     But one of the persons who called you and  
7 told you you had the job was Senator Carrico.

8           A     He needed to set up a -- yes, he wanted  
9 to set up a meeting to -- he had been authorized by the  
10 selection committee and the board to go into salary  
11 negotiations and to execute the contract.

12          Q     And he congratulated you on your new job;  
13 correct?

14          A     I'm not so sure if he used the words  
15 "congratulations." I don't even think Miss Brooks did.  
16 I think -- the phone call was very professional.

17          Q     In your view is the word  
18 "congratulations" not professional?

19          A     Well, I think "congratulations" may imply  
20 something. But for me, I think it was very  
21 professional, the fact that -- you know, I had not  
22 signed a contract yet. Maybe congratulations came  
23 after it was official.

24                     I think that, if I remember correctly,  
25 the conversations with both Miss Brooks and

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1 Senator Carrico were, "The board voted and has selected  
2 you and we need to enter into contract negotiations."

3                     Now, I was not going to say, "Yes, I'm  
4 going to take the job" that night. I did not do that,

Matlock dep tran

5 because I wanted to see what the salary and benefits  
6 was going to be.

7 Q Wait just a minute.

8 After you were told that you'd been  
9 chosen for the job, you did not accept the job because  
10 you didn't know what the money would be yet?

11 A Yeah, there was no -- I was told that  
12 they had selected me and that we need to arrange a  
13 meeting to talk about compensation.

14 He -- I think he'd been authorized to --  
15 at that point, he was the chairman -- to negotiate with  
16 the HR person and UVA on behalf of the board, and I  
17 think they had given him a range.

18 Q Did you accept the job before you knew  
19 what the job paid?

20 A I don't believe so.

21 Q Do you know?

22 A Well, I mean, I -- I may have said  
23 something like, as anybody would, "I'm very interested  
24 in working for you and I look forward to salary  
25 negotiations," but until I signed a piece of paper, as

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1 far as I was concerned, you know, I was the  
2 vice president of Virginia Highlands Community College.

3 Q Did you not know what the salary range  
4 for the job was when you were seeking the job?

5 A Yes, I knew.

6 Q You had to; right?

7 A I knew what the range was, and that's one  
8 reason why I didn't sign. I had heard rumors that the  
9 offer was going to be significantly less than

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10 advertised.

11 Q What was advertised?

12 A \$150,000.

13 Q When did you first physically come to the  
14 job site and begin work?

15 A November 2nd, 2015.

16 Q When did you accept the job?

17 A At some point between that board meeting  
18 and the first of November, we had multiple meetings on  
19 the contract and start date, because I did not want to  
20 start on November 2nd. I did not want to start until  
21 January of -- I begged. I did not want to start until  
22 January of '16.

23 Q And you were told?

24 A That the position would be this amount of  
25 money and that I -- and that they had been authorized

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1 to give me that amount of money, within that range, and  
2 the start date would be November 2nd; that I  
3 couldn't -- I couldn't postpone starting.

4 Q And you were told that you could not  
5 postpone or delay your start for what reason?

6 A I was not -- I was personally not given a  
7 reason.

8 Q When did you give notice to the college  
9 that you were leaving?

10 A Probably the day I signed the contract.

11 Q How much notice did you give the college?

12 A You know, I'm not certain. I think it  
13 was probably less than two weeks.

14 But the president of the college is a



15 voting board member, so he had full awareness of the  
16 whole process once the selection -- once that meeting  
17 took place at the dinner I spoke of.

18 He was not on the selection committee.  
19 He -- so he knew -- whenever they advertised, "Here's  
20 our final three people that we're going to be bringing  
21 to the Center for a day's of activities," to my  
22 knowledge, that's the first time my current employer  
23 had knowledge of that.

24 Q Have kids from your church ever come to  
25 your office at the Center --

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1 A Of course.

2 Q -- from time to time?

3 A And my grandchildren come visit me a lot.

4 Q I wasn't asking about your grandchildren,  
5 actually.

6 A Okay. But they are members of my church,  
7 my wife and my children.

8 Q I was -- so the members of the -- of your  
9 youth group come to your office from time to time?

10 A I'm not sure if they always make it to  
11 the office, but they come to the Center. People that  
12 I've mentored and if they are in the area, stop in to  
13 say hello.

14 Q During the day on -- on company business,  
15 so to speak.

16 A At all times. I am sometimes there till  
17 late at night, so I might see them at an event. So to  
18 say that they only visit me during the daytime would be  
19 unfair.

20 Q I just asked a simple question. Have  
21 members of your church come to see you during your  
22 regular office hours at the Center?

23 A Yes.

24 Q What are your job responsibilities as  
25 executive director?

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1 A Well, to make sure that our agency is the  
2 most efficient and effective as it can be, to make sure  
3 that we are meeting the mission as well as we can, to  
4 make sure that we have the resources necessary to carry  
5 out that mission.

6 Q Do you have a supervisor?

7 A I report directly to the board.

8 Q Do you have a supervisor?

9 A As -- as someone who would like --

10 Q Supervise you.

11 A On daily basis?

12 Q Daily, hourly, weekly, monthly, whatever.

13 A No, sir.

14 Q You don't have a supervisor?

15 A No.

16 As an agency head, I think that my  
17 structure is just like all the other agency heads in  
18 the Commonwealth of Virginia. I don't think I'm any  
19 different when it comes to supervision.

20 I have outcomes, key performance  
21 indicators. I have board members in and out of the  
22 building constantly, if not daily, with extreme  
23 interaction.

24 Q Has Senator Carrico served as your

25 supervisor at any time?

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1 A According to the Code of Virginia, I  
2 believe that I am directly -- I directly report to the  
3 board of which, currently, Senator Carrico is the  
4 chairman.

5 I don't do -- regardless of who the  
6 chairman would be, I don't do much without support,  
7 guidance from my executive board.

8 Q Is Senator Carrico getting ready to  
9 rotate off the board?

10 A I believe he rotates off this summer.

11 Q You believe he does or you know he does?

12 A I believe that's the intent.

13 Q Do you know a Donna Kauffman?

14 A Extremely well, yes, I do.

15 Q Who is she?

16 A She is the chancellor president of the  
17 University of Virginia College of Wise. She serves on  
18 the board, she serves on the executive board. She was  
19 treasurer or secretary for a long time of the executive  
20 board.

21 MR. GRIMES: Mark this, please.

22 (1/26/17 email from Donna Kauffman to  
23 David Matlock re: UVA ID Card Office  
marked as Matlock Exhibit Number 4)

24 BY MR. GRIMES:

25 Q Exhibit 4 is an email from Donna Kauffman

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1 to you dated January 26, 2017. There she writes, "Hi  
2 David, so great to see you again and to meet Adam face

Matlock dep tran

3 to face."

4 That's Adam Tolbert; correct?

5 A Yes, I assume that's who she's speaking  
6 of. I think he's the only Adam we have in our  
7 building, and he's copied up at the top. So, yes, sir.

8 Q That's a clue, isn't it?

9 A I mean, he is copied.

10 Q The next sentence, she writes, "I called  
11 ahead to the ID Card Office to inform them why I signed  
12 for Nancy Rivers (even though you report to  
13 Senator Carrico), so you should be good to go."

14 So is it true or false that you reported  
15 to Senator Carrico?

16 A Well, as stated, I report to the entire  
17 board of which Senator Carrico is the chairman. So  
18 obviously when you have a board of 22 people, I'm not  
19 going to call all 22 people.

20 My primary correspondence has always been  
21 with the chairman and, when necessary, the executive  
22 committee.

23 Q Do you agree that Donna Kauffman said  
24 that you report to Senator Carrico?

25 Don't you agree that's what she says

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1 right here?

2 A Well, yeah, that's what she said, yeah.

3 Q Is that true or false?

4 A Well, it's true in the sense that he's  
5 the chairman of the executive board. He's the chairman  
6 of the board and, according to the Code, that's who I  
7 report to.

8                   Q       Matlock dep tran  
                  Q       who does the budget for the Center?  
9                   A       It's collaborative.  
10                  Q       who are the collaborators?  
11                  A       Currently, myself, all department heads.  
12                  Q       And has the composition of the  
13 collaborators changed during your employment?  
14                  A       Yes.  
15                  Q       When Mr. Carmack was employed, did you  
16 ask a former employee to help you with the budget  
17 instead of Mr. Carmack?  
18                  A       No. What I asked a former employee was  
19 for guidance in understanding the budget process.  
20                  Q       Did you ask a former employee for  
21 guidance and understanding with respect to the budget  
22 process?  
23                  A       Yes.  
24                  Q       who was that former employee?  
25                  A       Dr. Rachel Fowlkes, former executive

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1       director. She was a great person to guidance because  
2       she had held that job, and so I had questions that she  
3       would have a tremendous amount of historical knowledge.

4                   Chris Fields, who I worked with at VHCC  
5       who is vice president of finance who had been the  
6       budget manager/finance director at the Center for  
7       somewhere around 15 years maybe and had developed many  
8       of the early budgets.

9                  Q       She was a former employee as well?

10                 A       Yeah, both of those folks were former  
11 employees of the Center.

12                 Q       Did you consider asking Mr. Carmack, your

13 chief financial officer, for help understanding the  
14 budget?

15 A Oh, I did.

16 Q Did you ask Mr. Carmack for help to  
17 understand the budget?

18 A Yes.

19 Q Did your job duties require that you  
20 speak from time to time with the Department of Planning  
21 and Budget?

22 A Yes.

23 Q What is their role within the context of  
24 the Center and the Foundation, the Department of  
25 Planning and Budget?

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1 A I don't believe they have a role with  
2 respect to the Foundation, sir.

3 Q What about the Center?

4 A Well, yes, sir, that's the Department of  
5 Planning and Budgeting. They work very closely. We  
6 have a strategic plan that we have to do for the  
7 Governor's Office every two years, and so they -- they  
8 are very involved in everything from fiscal needs to  
9 budget amendments, to, you know, understanding the  
10 allocations and where the money is supposed to go. I  
11 mean, they are exactly what it says; they are the  
12 Department of Planning and Budgeting for State  
13 agencies, of which we are one.

14 Q Did Mr. Carmack's job as CFO require that  
15 he speak with the Department of Planning and Budget?

16 A Yes.

17 Q At some point was he prohibited from

Matlock dep tran  
18 speaking with the Department of Planning and Budget?  
19 A No.  
20 Q When you started working at the Center,  
21 did you have a door with a window?  
22 A Yes, I did.  
23 Q Did you change that out to a solid door  
24 with no window?  
25 A I did.

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1 Q And you did that for privacy?  
2 A I did.  
3 Q Did you add additional locks to your  
4 office?  
5 A I did not add additional locks to my  
6 office.  
7 Q How would you describe your relationship  
8 with your predecessor?  
9 A Dr. Fowlkes.  
10 Q That would be her name.  
11 How would you describe your relationship  
12 with her?  
13 A We speak -- at the very beginning of the  
14 transition, I would try to meet with Dr. Fowlkes  
15 monthly and have lunch with her.  
16 Obviously she had a wealth of knowledge.  
17 So I think we have a professional working relationship  
18 that's, I think, a good relationship.  
19 Q Was she a Democrat or a Republican?  
20 A I -- I don't know, sir.  
21 Q Is it your testimony --  
22 A She's not told me directly what she is.

23                   Q       Matlock dep tran  
24                               Right.  
25                               But have you heard that she was a  
Democrat?

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1                   A       Well, I can say this. I attended a  
2                               Democratic rally for Senator Kaine in which she was  
3                               present.

4                   Q       All right. That's one indicator, isn't  
5                               it?

6                               Have you heard that she was a Democrat?

7                   A       I don't believe so.

8                   Q       Are you certain of that answer?

9                   A       That someone told me that Rachel Fowlkes  
10                              was a Democrat?

11                   Q       No, that you heard she was a Democrat.

12                   A       I guess the best way for me to answer  
13                              that to be totally truthful with you is that I would  
14                              assume she was a Democrat.

15                   Q       And you assume that based upon what  
16                              objective data?

17                   A       Well, she parks beside me when she visits  
18                              the Center. And I believe that during the last  
19                              election, she had a couple bumper stickers promoting a  
20                              candidate from the Democratic Party. I believe that to  
21                              be true.

22                   Q       Any other data that led you to assume  
23                              that Rachel Fowlkes was a Democrat?

24                   A       No. She -- Rachel and I never talked  
25                              about politics. We talked about the Center's success.

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1                   Q       Was artwork put up at the Center to



2 recognize Dr. Fowlkes' accomplishments at the Center?

3 A Yes.

4 Q Describe the artwork.

5 A It's a mobile that contains things that  
6 represent her journey as the executive director of the  
7 Center. It has like a diploma, a light bulb, a car  
8 with her license plates on it, just things that depict  
9 the story of her journey in higher education.

10 Q And an artist was commissioned to create  
11 the artwork; is that correct?

12 A That's what I was told.

13 Q Do you remember the name of the artist?

14 A I do.

15 Q What was the name?

16 A Her name is Val, V-a-l, Lyle.

17 Q And the cost of the artwork was  
18 approximately \$9,000; correct?

19 A Well, I believe, only because I have  
20 recent work on this, 9,900 is what was stated in the --

21 Q \$9,900; correct?

22 A Um-hum, of Foundation funds.

23 Q Did you give orders to take down the  
24 artwork at some point?

25 A Did I give orders to take it down?

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1 Q Yes, sir.

2 A No, sir.

3 Q Yes, sir.

4 Was it taken down at some point?

5 A Yes, sir.

6 Q Upon whose instruction?

7           A       When I arrived at the Center, the  
8 building was 20 years old.

9           Q       Upon whose instruction?

10          A       It was the recommendation of the  
11 facility's maintenance team.

12          Q       Did you have input in that decision as  
13 the executive director of the Center?

14          A       Well, yeah. Their recommendation made  
15 perfect sense.

16          Q       And you approved that recommendation?

17          A       I really had no choice. Yes, sir, I did  
18 approve it.

19          Q       You had no choice?

20          A       There was construction work to be done,  
21 sir, so it was either leave a shoddy ceiling or make it  
22 look professional.

23          Q       And the mobile was taken down when?

24          A       Oh, I had been there about a year, so  
25 sometime in the winter of '16.

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1           Q       And the mobile was down for how long?

2           A       I'm going to say approximately 18 months.

3           Q       18 months?

4           A       Yes, sir.

5           Q       And the mobile was then put back up;  
6 correct?

7           A       Yes, sir.

8           Q       After this lawsuit was filed; correct?

9           A       Well, yes, sir, I mean, it -- that would  
10 be -- that's a fair statement.

11          Q       The mobile was put back up when?

12 A Sometime this early fall, I think.

13 Q Do you remember who took the mobile down?

14 A Well, whoever was working that day.

15 And I believe that the artist assisted as  
16 well because she wanted to make sure it was handled  
17 with care and she wanted to enhance it and make new  
18 pieces for it.

19 Q Didn't Joe Mitchell take down the mobile?

20 A He was the maintenance supervisor at that  
21 time.

22 Q Didn't you tell Joe Mitchell to take down  
23 the mobile?

24 A No.

25 Q You didn't?

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1 A Joe -- Joe made a recommendation.

2 Q Did employees or members of the board  
3 ever inquire about the whereabouts of the mobile?

4 A I never had a single board member inquire  
5 about the whereabouts of the mobile.

6 Q Did employees or members of the board  
7 ever ask that the mobile be put back up?

8 A The only person that ever asked that the  
9 mobile be put back up was Alicia Young and Duffy  
10 Carmack.

11 I even had conversations about the delay  
12 in getting it put back up with Dr. Fowlkes and  
13 explained why it was taking us more than a year.

14 Q Who gave instructions to put the mobile  
15 back up?

16 A Well, I did. It's a nice piece of art.

17 Q Um-hum.

18 The mobile was taken down, you say, to  
19 fix ceiling tiles; correct?

20 A I didn't say that.

21 Q You didn't?

22 was the mobile taken down to fix ceiling  
23 tiles?

24 A Yes, it was.

25 Q And how many years did it take to fix the  
100

1 ceiling tiles?

2 A I think those ceiling tiles were fixed  
3 within a couple weeks of the mobile being taken down.

4 Q Right.

5 within two weeks the ceiling tiles were  
6 repaired; correct?

7 A That is correct.

8 Q But it took another 17 months to get the  
9 mobile back; correct?

10 A That's correct.

11 Q Did you hear from anyone that Dr. Fowlkes  
12 had indicated that her choice for replacement as CEO  
13 would be Duffy Carmack? Did you ever hear that?

14 A I heard that from Mr. Carmack.

15 Q Have you heard that from anybody else?

16 A No.

17 Q Like Dr. Fowlkes?

18 A No.

19 Q Are you sure?

20 A Yeah. I don't think Dr. Fowlkes would  
21 ever tell me -- Dr. Fowlkes is a very professional

22 person. She would not say publicly or privately if she  
23 was endorsing a candidate to replace her. In fact, I  
24 don't -- no, Dr. Fowlkes did not tell me that.

25 Q Did you ever hear why Duffy Carmack was 101

1 not selected to be the executive director?

2 A No, sir. I was not on the selection  
3 committee.

4 Q I didn't ask that question.

5 Have you heard from anyone why Duffy  
6 Carmack was not selected as executive director?

7 A No, sir.

8 Q He was employed as the CFO prior to your  
9 being hired as executive director; correct?

10 A That's correct.

11 Q And then you obviously had no role in  
12 hiring him; correct?

13 A That's correct.

14 Q Did you interact with Duffy Carmack for  
15 work purposes while you were employed at the Center?

16 A I did.

17 Q Did you ever make any complaints about  
18 him to anyone?

19 A No.

20 Q You were aware that Duffy Carmack was the  
21 interim executive director after Dr. Fowlkes retired  
22 and before you came; correct?

23 A Yes, sir.

24 Q And you didn't place him in that  
25 position; correct?

1 A No, sir, I did not.

2 Q Were you ever asked to compensate him for  
3 serving as executive director?

4 A No, sir.

5 Q As interim executive director, I should  
6 have said.

7 A No, sir.

8 Q Did the subject of compensating Duffy  
9 Carmack for his work as an interim executive director  
10 ever come up?

11 A No, sir.

12 Q Do you have any knowledge concerning why  
13 Assistant General Attorney Elizabeth Griffin made the  
14 Foundation a separate entity from the Center in 2016?

15 A She did not, sir. The Foundation was a  
16 separate entity of the Center on the day it was  
17 created. It was not an act of the Attorney General's  
18 office, of our counsel.

19 The Foundation is solely a separate  
20 entity of the Foundation -- of the Center and has  
21 always been.

22 Q Was Elizabeth Griffin involved in any way  
23 in the decision to make the Foundation a separate  
24 entity from the Center?

25 A I don't think she was the -- I don't

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1 know, because I don't know who counsel was when the  
2 Foundation was created.

3 Q Were you involved in the decision to make  
4 the Foundation a separate entity from the Center?

Matlock dep tran  
5 A No, sir. The Foundation existed before I  
6 arrived. I had nothing to do with its creation.

7 Q Do you know how Carmack was paid while he  
8 worked at CFO? And by that I specifically mean his  
9 source of funding.

10 A Well, part of his funding came out of  
11 general funds, some nongeneral funds, and we were  
12 reimbursed for his duties based on an MOU with the  
13 Foundation.

14 Q What's an MOU?

15 A Memorandum of Understanding.

16 Q Was 25 percent of his compensation paid  
17 by the Foundation?

18 A I -- I believe that to be true. I do not  
19 know. I have not looked at that number. That sounds  
20 like -- that sounds like a fair estimate.

21 Q And 75 percent by the Center?

22 A Of his salary?

23 Q Yes, sir.

24 A Yes, sir, that sounds like a fair  
25 estimate.

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1 Q Well, I don't think we need to estimate.

2 What does the MOU say with respect to  
3 Mr. Carmack's compensation?

4 A I don't know, sir.

5 Q You don't know?

6 A I don't have it in front of me, no, sir.

7 Q Nor do you have a memory of what it says.

8 A I don't think it quite says 25 percent.

9 I think that it might say -- you know, exactly, I don't

10 know, sir.

11 You know, it's -- it's -- it was always a  
12 moving target that I could never wrap my arms around.

13 But, again, I would say that's a fair  
14 estimate.

15 Q What was a moving target that you could  
16 never wrap your arms around?

17 A Understanding when Mr. Carmack was acting  
18 for the Foundation and when Mr. Carmack was acting for  
19 the Center.

20 Q And why was that of concern to you?

21 A Well, because if, in fact, we're only  
22 being reimbursed for 25 percent of his wages, I  
23 wanted -- I didn't want to -- make sure that -- I  
24 didn't want him doing 40 percent of his work. I just  
25 wanted to make sure that everything was fair and

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1 equitable.

2 Q And what did you do to help yourself wrap  
3 your arms around that?

4 A I asked Mr. Carmack to keep a log of when  
5 he was working for the Foundation.

6 Q Did you do anything else?

7 A I tried to get a understanding of the  
8 reimbursements to make sure that they were clearly  
9 reflected.

10 Q How did you do that?

11 A Well, I asked for, you know, the  
12 transfers, how it reflected in the budget.

13 Q You asked who?

14 A Miss Debbie Hensley.



15                   Q       Matlock dep tran  
                          who is she?  
16                   A       She's the business manager.  
17                   Q       Speaking of Elizabeth Griffin, where was  
18 her office?  
19                   A       I'm going to assume it was in this  
20 building.  
21                   Q       In Richmond.  
22                   A       Yeah, in Richmond.  
23                   Q       In Richmond.  
24                           And did she have responsibility at the  
25 time for oversight, that is, providing legal advice to 106

1 the Center and the Foundation?  
2                   A       No, never the Foundation. She was always  
3 very clear that she was legal counsel for the Center.  
4                   Q       For the Center?  
5                   A       And had nothing whatsoever to do with  
6 legal counsel for the Foundation.  
7                   Q       Speaking of Elizabeth Griffin, do you  
8 know anything about Mr. Carmack's emails to Elizabeth  
9 Griffin being blocked in October of 2017?  
10                   A       They were not.  
11                   Q       They were not?  
12                   A       They were not.  
13                   Q       How do you know that?  
14                   A       Because when I read the Complaint, I  
15 pulled all of our logs, and his emails to Miss Griffin  
16 were not blocked in October of '17.  
17                   Q       Who was in IT at the time?  
18                   A       Nicky Rhley, Jeff Webb, Adam Tolbert,  
19 Austin Dierks.

Matlock dep tran  
20 Q What was Adam Tolbert's involvement with  
21 IT?

22 A He probably answered -- he did a lot of  
23 open tickets. So if someone -- you know, if your  
24 printer didn't work, you couldn't get on the Internet,  
25 you were having problems with the -- the system in any 107

1 way, you would submit a ticket. And they had a cycle  
2 by which people would choose to answer tickets to make  
3 sure that we would operate efficiently.

4 Q Did he have a degree in information  
5 technology?

6 A No. I believe Adam Tolbert's degree may  
7 be business administration.

8 Q You believe it is or you know it is?

9 A No, I would have to say I believe. I  
10 don't know.

11 Q But he worked in IT at the Center?

12 A Yes, sir.

13 Q Did you have the power to hire and fire  
14 at the Foundation?

15 A Oh, no, sir.

16 Q Stated differently, did you have the  
17 ability to remove Mr. Carmack as the CEO of the  
18 Foundation?

19 A No.

20 Q Can the Center survive without the  
21 Foundation?

22 A Yes.

23 Q Why does the Foundation exist then?

24 A That's the question I asked upon my

25 arrival, because the <sup>Matlock dep tran</sup> Foundation was created to raise 108

1 funds to support the activities of the Center, of which  
2 it was not doing.

3 So, yes, we could operate all day long  
4 without the help of the Foundation because in my  
5 tenure, they were not raising funds to support the  
6 Center.

7 Q Do you know what grants are?

8 A Yes, sir.

9 Q What are grants?

10 A Grants are monies distributed to  
11 organizations or benefactors to complete a purpose  
12 for -- in which they support. That would be a very  
13 broad definition.

14 Q Doesn't the Foundation manage all grants  
15 for the Center?

16 A The Foundation manages all grants.

17 Q For the Center. It doesn't support  
18 anything other than the Center, does it?

19 A It's self-supported.

20 Q Pardon?

21 A They -- they supported grants of which --  
22 yeah, the grants they supported did not support the  
23 Center, if -- if that's where you're headed.

24 Q The grants that the Foundation managed  
25 supported what?

1 A They had entered into an agreement to be  
2 a fiscal agent for the Virginia Tobacco Commission to  
3 manage grants in our region across, very broadly,

Matlock dep tran

4 Southwest Virginia, to enhance economic development,  
5 kind of like a -- capital investments. And, so, they  
6 would award -- the Tobacco Commission would award  
7 grants to company ABC to make widgets, then the  
8 Foundation would manage grant ABC and make sure that  
9 the widgets were being made properly.

10 Q Did the grants exceed \$25 million?

11 A I'm sure there's times they exceeded more  
12 than that.

13 Q Did you have power to hire and fire at  
14 the Center?

15 A Yes, sir.

16 Q Did you have to get approval by anyone to  
17 hire and fire at the Center?

18 A No, sir.

19 Q If employees of the Center are terminated  
20 and they were beyond their probationary period, are  
21 they eligible to pursue the State grievance procedure?

22 A If a employee is terminated --

23 Q Yeah.

24 A -- and they work -- so if they are  
25 terminated, how are they going to work? You lost me on  
110

1 that one, sir.

2 So if an employee is terminated and they  
3 continue to work?

4 Q No, sir.

5 A Okay. Help me out.

6 Q You know what a probationary period is;  
7 correct?

8 A Yes, sir.

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9 Q If an employee of the Center --  
10 A Okay.  
11 Q -- is beyond her probationary period --  
12 A Okay.  
13 Q -- and is terminated, can she use the  
14 State grievance procedure to challenge her termination?  
15 A I would probably think so. I've never  
16 had that happen.  
17 Q If employees are terminated pursuant to  
18 the work Force Transition Act or WTA, are they eligible  
19 to use the State grievance procedure?  
20 A I would have to consult with an HR  
21 professional on that one. I don't know, sir.  
22 Q How did you first learn of the WTA?  
23 A Through my experience with Virginia  
24 Community College systems.  
25 Q So you say it's while you were working

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1 for the college?  
2 A Virginia Highlands Community College,  
3 yes, sir.  
4 Q Have you ever known the WTA to be used  
5 before anywhere in the State?  
6 A Yes, sir. It's my understanding it's  
7 used quite frequently.  
8 Q And that understanding is based on what?  
9 A Consultation with DHRM.  
10 Q When did --  
11 A Department of Human Resource Management.  
12 Q And when did you consult with DHRM and  
13 learn that?

Matlock dep tran

14           A       well, I first learned about it during my  
15       tenure as a vice president at Virginia Highlands  
16       Community College.

17           Q       What is the process for invoking the WTA?

18           A       well, it's my understanding that you have  
19       to be, first of all, in a budget -- mandated budget  
20       reduction. And so if you're mandated, if you're in a  
21       period in which the Governor has mandated a budget  
22       reduction to your State agency, an option made  
23       available to you is WTA. Then you must seek approval  
24       from DPB and DHRM.

25           Q       DHRM stands for what?

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1           A       Department of Human Resource Management.

2           Q       And the other acronym stands for what?

3           A       DPB? Department of Planning and  
4       Budgeting.

5           Q       Did you ever use the WTA while working at  
6       the college?

7           A       Are you referring to Virginia Highlands  
8       Community College?

9           Q       well, that's -- did you work for any  
10       other college?

11          A       well, no, sir.

12          Q       well, then that's the one I'm referring  
13       to.

14          A       Okay. So you used the word "I."  
15                    So the college did, sir, Virginia  
16       Highlands Community College as well as Wytheville  
17       Community College, Mountain Empire Community College,  
18       Southwest Virginia Community College, a lot of our

Matlock dep tran

19 four-year public institutions, other State agencies, I  
20 was very aware they had all used the WTA during times  
21 of mandated government reductions.

22 Q Did you prepare the paperwork, the WTA  
23 paperwork, with respect to any reduction at the Center?

24 A Did I prepare the paperwork?

25 Q Yes, sir.

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1 A I prepared the proposal that was shared  
2 with all legal counsel, DPB and DHRM.

3 Q So you prepared the proposal?

4 A Yes, sir.

5 Q And then you sent it to legal?

6 A I think originally it went to DHRM and  
7 DPB, and then I guess they bounce it off legal.

8 Q You guess or you know?

9 A I believe that to be true, yes, sir.

10 Q Did anybody help you prepare the WTA  
11 paperwork?

12 A Well, I sought guidance.

13 Q From?

14 A The first place I sought it from was  
15 someone who had done many of them, and that was Chris  
16 Fields.

17 Q Chris Fields?

18 A Um-hum, former business manager.

19 Q Former employee; correct?

20 A Um-hum, um-hum.

21 MR. KINCER: Yes?

22 THE WITNESS: Yes, yes, former employee.

23 And then I sought guidance from DPB and

24 DHRM.

25 BY MR. GRIMES:

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1 Q Who in DPB?

2 A My Higher Education Center liaison, I'll  
3 think of it, Michael Maul.

4 Q Spell the last name?

5 A I'm going to say M-a-u-l.

6 Q Where was he?

7 A His office is over in the -- the building  
8 adjacent to the old courthouse.

9 Q In Richmond?

10 A Yes, sir.

11 Q And who did you consult with at DHRM?

12 A Debbie Rigdon.

13 Q Also in Richmond?

14 A Yes, sir.

15 Q Before the executive committee of the  
16 board approved the use of the WTA, did they know that  
17 you were eliminating Carmack's job?

18 A Yes.

19 Q And you're certain of that?

20 A I'm very certain of that.

21 Q When did you let them know?

22 A There was an executive meeting on or  
23 about June 30th of 2017 in which I presented my WTA  
24 proposal to the five members of the executive board.

25 Q And did you tell them then that you were  
115

1 getting rid of Carmack's job?



Matlock dep tran  
2 A well, I -- we -- I told them, yes, we  
3 were going to -- in the WTA, that Mr. Carmack's,  
4 Miss Brooks' and Miss Williams' positions would be,  
5 they would be offered a WTA incentive and that their  
6 duties would be spread across the Center to make us  
7 more efficient and more effective.

8 And WTA is a -- it's more of a -- it's a  
9 layoff, is what it is.

10 Q A layoff; right?

11 A Yes, sir.

12 Q So the idea is you lay off the employee  
13 for a period of time and then bring the employee back  
14 at some time; correct?

15 A I don't think that's the idea. I think  
16 that the -- it depends on the options chosen by the  
17 employee at the time of execution of the WTA.

18 Q So the idea of a layoff is not to bring  
19 somebody back ever. They are done.

20 A The idea of the layoff is to make the  
21 Center, to make the agency, make the State government  
22 more efficient and more effective to eliminate cost.

23 And it is my understanding that those  
24 positions cannot be filled for a two-year period.

25 Q In your mind as executive director, how  
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1 does a layoff differ from a termination, if at all?

2 A Well, a layoff, there was options. A  
3 termination you say bye. There was incentives. There  
4 was monetary incentives with this, with this WTA.

5 Q Was Elizabeth Griffin involved in  
6 eliminating Mr. Carmack's job?

7                   A       Matlock dep tran  
8       Elizabeth Griffin was in the -- in the  
9       process of the -- she was part of the process for the  
10       WTA.  
11                  Q       Is that a yes?  
12                  A       That's the way I would answer it. I --  
13       yes, sir.  
14                  Q       Was Senator Carrico involved in  
15       eliminating Mr. Carmack's job?  
16                  A       Only to the fact that as a member of the  
17       executive board, when I presented the WTA process to  
18       the entire executive board, he was a member of the five  
19       board members that day.  
20                  Q       And who are the five board members?  
21                  A       Senator Carrico was chairman or was  
22       chairman at that particular time. A gentleman by the  
23       name of Saul Hernandez, a Governor appointee was the  
24       vice chairman, Donna Henry is chancellor/president,  
25       chancellor of UVA Wise, Brian Hemphill, president of  
26       Radford University, and Gene Couch, president of VHCC.

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1                  Q       Did you reach out to certain board  
2       members who were not on the executive committee and  
3       talk with them about eliminating Carmack's job?  
4                  A       No.  
5                  Q       Never did that?  
6                  A       No.  
7                  Q       Did you have the authority to eliminate  
8       Carmack's job without getting approval from the entire  
9       board?  
10                 A       Yes. The Code of Virginia I believe is  
11       very clear that the agency head is responsible for the

12                                   Matlock dep tran  
12   hiring and firing and operation of the Center.  
13                                   The board is responsible for the hiring  
14   and firing of the agency head.  
15                   Q     Did any members of the board tell you  
16   that they did not support the layoff?  
17                   A     No.  
18                   Q     Do you know a Gary Hearl, H-e-a-r-l?  
19                   A     I do.  
20                   Q     Who is that?  
21                   A     Gary is now the current chairman of  
22   the -- of the Center's Foundation.  
23                                   MR. GRIMES: Mark this, please.  
24  
25

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1                                   (Email string January/February 2018  
2                                   between Gary Hearl and David Matlock re:  
3                                   Restructuring at SW Virginia Higher  
                                  Education Center marked as Matlock  
                                  Exhibit Number 5)  
4   BY MR. GRIMES:  
5                   Q     Exhibit 5 is an email string. If you  
6   look at the email at the bottom of the page, January 8,  
7   2018 --  
8                   A     Okay.  
9                   Q     -- there the writer states, "David,  
10   regarding the call, could we make it maybe tomorrow?  
11   My father-in-law passed away this weekend and we are  
12   making the arrangements today. Am really disappointed  
13   with the layoffs having to occur."  
14                                   Is that what Mr. Hearl said to you?  
15                   A     That's what is printed there, yes.  
16                   Q     And on the next page you write,

17                                   Matlock dep tran  
18     January 7, 2018, "Gary, would you be available for a  
19     phone call tomorrow morning and then a possible lunch  
together later in the week? David."

20                                   Did I read that correctly?

21                   A       That's correct.

22                   Q       And what was Mr. Hearl's relationship to  
23     the Center or the Foundation then?

24                   A       He had no relationship to the Center  
25     other than his duties as a member of the board for the

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1     Foundation. He -- he may have been -- I believe he was  
2     the chairman of the Foundation board that day -- at  
3     that time.

4                   Q       Do you know a Patrick Callebs,  
5     C-a-l-l-e-b-s?

6                   A       I do.

7                   Q       Who is that?

8                   A       He is a member of the Foundation board.

9                   Q       What did you tell him about the layoffs?

10                  A       Basically what I told here in the email  
11     that took place on January the 7th; that due to  
12     budgetary shortfalls in the Commonwealth of Virginia,  
13     that we were going to mandate -- these mandated  
14     reductions resulted in us finding ways that were more  
15     efficient and more effective.

16                  Q       To get rid of people?

17                  A       No, to make us more efficient and more  
18     effective.

19                  Q       Did that involve getting rid of people?

20                  A       It would -- it resolve -- involved  
21     reduction in force.

22                   Q       Matlock dep tran  
which --  
23                   A       Very common in being efficient and  
24 effective.  
25                   Q       which required that you get rid of

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1 people; correct?

2                   A       It required us to offer people  
3 incentives.

4                   Q       To leave their jobs; correct?

5                   A       Incentives, yes.

6                             (1/7/18 email string between Patrick  
7 Callebs and David Matlock re:  
8 Restructuring at SW Virginia Higher  
Education Center marked as Matlock  
Exhibit Number 6)

9 BY MR. GRIMES:

10                  Q       Exhibit 6 is an email from you, the  
11 second one down, January 7, 2018, and you write, "Pat,  
12 would you be available for a phone conversation  
13 tomorrow morning regarding the email below? I value  
14 your advice and friendship. David."

15                  A       Yes.

16                  Q       Correct?

17                  A       That's correct.

18                  Q       Did Mr. Callebs oppose your reduction in  
19 force?

20                  A       No.

21                  Q       He didn't?

22                  A       No.

23                  Q       Do you know Carol Jones?

24                  A       Yes.

25                  Q       who is she?

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Matlock dep tran

1 A She's a Foundation board member.

2 Q Did she oppose your reduction in force?

3 A No.

4 Q Did anyone oppose your reduction in  
5 force?

6 A There were a couple board members after  
7 receiving this email who needed more explanation.

8 Q They needed more explanation?

9 A Um-hum. These are Foundation board  
10 members. They have no -- it's a totally separate  
11 entity.

12 (1/7/18 Email String between David  
13 Matlock and Carol Jones Re:  
14 Restructuring at SW Virginia Higher  
Education Center marked as Matlock  
Exhibit Number 7)

15 THE WITNESS: And it was about a  
16 different matter.

17 BY MR. GRIMES:

18 Q Exhibit 7 concerns restructuring at the  
19 Southwest Virginia Virginia Higher Ed- -- strike  
20 that -- restructuring at Southwest Virginia Higher  
21 Education Center; correct?

22 A Um-hum.

23 Q And those are your words, aren't they?

24 A Um-hum.

25 THE COURT REPORTER: If you could answer 122

1 for me.

2 THE WITNESS: Yes. Yes.

3 BY MR. GRIMES:

4 Q The email is from you to Carol Jones --

5 A Yes.

6 Q -- on January 7, 2018; correct?

7 A That is correct.

8 Q There you write, "Carol, would you be  
9 available for a short phone call with me tomorrow  
10 afternoon regarding the email below? I value your  
11 friendship and advice. Thank you. David."

12 That's what you wrote, isn't it?

13 A Yes.

14 Q Did she oppose the reduction in force?

15 A No, she did not.

16 Q What did you tell her?

17 A Pat Callebs and Carol Jones had concerns  
18 about an investigation, and I wanted to make sure they  
19 understood there were two separate pieces here.

20 Q What investigation?

21 A The Foundation -- OSIG investigated the  
22 Foundation.

23 Q Didn't OSIG investigate you?

24 A Yes, sir. But this is a totally separate  
25 investigation. OSIG investigated the Foundation.

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1 Q And not you.

2 A OSIG investigated me based on Center  
3 activity.

4 OSIG investigated the Foundation based on  
5 Foundation activity.

6 Q And what did you tell Miss Jones and what  
7 did you tell Mr. Callebs?

8 A That these were totally separate, that --  
9 that this was necessary to make us more efficient and  
10 more effective and that I would hope that the

11 Foundation would do things necessary to do exactly what  
12 their bylaws say.

13 (1/7/18 email between David Matlock and  
14 Joseph Johnson re: Restructuring at SW  
Virginia Higher Education Center marked  
as Matlock Exhibit Number 8)

15 BY MR. GRIMES:

16 Q Exhibit 8 is an email from you to Joe  
17 Johnson dated January 7, 2018; correct?

18 A That's correct.

19 Q So you sent out a series of emails to  
20 these people on January 7th --

21 A That's correct.

22 Q -- of 2018; correct?

23 A That's correct.

24 Q And they all concern what you've written  
25 there, restructuring at Southwest Virginia Higher

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1 Education Center; correct?

2 A That's correct.

3 Q And you write there, "Good morning --"  
4 excuse me, "Good afternoon, Joe. Would you be  
5 available for a short meeting with me later in the week  
6 regarding the message below? I value your guidance and  
7 friendship. Thank you. David."

8 That's what you wrote; correct?

9 A That is correct.

10 Q What did you tell Joe?

11 A Basically, I wanted to make sure that Joe  
12 as well as we were talking about Carol and Pat, there  
13 was knowledge of the other ongoing investigation.

14 But primarily these were key people in  
15 our community. This kind of word would get out. And I



16 wanted to make sure they had a clear understanding of  
17 exactly what had taken place. I valued their guidance  
18 and their friendship.

19 Q A clear understanding from the  
20 perspective of David Matlock; correct?

21 A A clear understanding of exactly what was  
22 written there, based on the guidance from DHRM and DPB.

23 Q From David Matlock; correct?

24 A Again, sir, I did whatever -- I did what  
25 was -- my guidance provided me from DHRM and DPB.

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1 Q Did Pat and Carol understand that  
2 Mr. Carmack did nothing wrong with respect to Ed  
3 Rogers?

4 A I guess you would have to ask them that,  
5 sir. I don't know.

6 Q Did you tell them that Mr. Carmack did  
7 anything wrong with respect to Ed Rogers?

8 A They read the OSIG investigation,  
9 their -- the reports, their findings, and they would  
10 have to draw their own conclusion.

11 Q And you defended yourself in front of  
12 them; correct?

13 A Defended myself how, sir?

14 Q In any way, shape, or form on the earth.

15 A Again, what would I defend myself about?

16 Q Did you receive any negative feedback or  
17 comments from the board after eliminating Mr. Carmack's  
18 job?

19 A Three people from the Center's board  
20 expressed concerns, I believe it was three, and they

21 had discussions with the board chairman and legal  
22 counsel, Elizabeth Griffin.

23 Q And who were they?

24 A I believe it was Cheryl Carolco -- Cheryl  
25 Carrico, we had a new appointee from Lee County, his

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1 name slips me, and Mr. Steve Cochran. Those were the  
2 three board members that after receiving the email --  
3 they all received email, both Foundation and the Center  
4 board members -- they wanted some guidance as to the  
5 process, and legal counsel provided that to them.

6 Q Which would be Elizabeth Griffin;  
7 correct?

8 A Yes, sir.

9 Q Joshua Ely was --

10 A Josh, that's the one.

11 Q All right, Josh.

12 -- was very upset about what you did to  
13 Duffy Carmack, wasn't he?

14 MR. HARDY: Objection to form.

15 BY MR. GRIMES:

16 Q Go ahead and answer.

17 MR. HARDY: Answer to the best of your  
18 ability.

19 THE WITNESS: Okay. He had questions.

20 BY MR. GRIMES:

21 Q He wasn't upset?

22 A I didn't pick up a tone of being upset  
23 over the phone. It was more of, "Can you explain this?  
24 I'm brand new. I don't -- I don't understand this.  
25 How come --" you know, his big concern was -- I believe

1 it was Josh. It could have been someone else. But I  
2 think Josh's concern was, "I come to my very first  
3 board meeting and you say revenue is good, but then I  
4 see you say due to budgetary shortfalls in the  
5 Commonwealth of Virginia, this is what you're going to  
6 do."

7 He wanted some guidance on how to  
8 understand that.

9 Q Because you said at the very first board  
10 meeting that he attended, revenue is good, didn't you?

11 A Yes, revenue was good.

12 Q And that was true, wasn't it?

13 A Yes, that is true.

14 Q And after that, you got rid of some jobs,  
15 including Duffy Carmack; correct?

16 A I made the Center more efficient and more  
17 effective.

18 (1/7/18 email string between David  
19 Matlock and Joshua Ely re: HEC Update  
20 to Board Members marked as Matlock  
Exhibit Number 9)

21 MR. GRIMES: What's the number?

22 THE COURT REPORTER: 9.

23 BY MR. GRIMES:

24 Q Exhibit 9 is an email about the middle of  
25 the page from Joshua Ely to you dated January 4, 2018,  
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1 three days before you sent the emails to the Foundation  
2 board members we discussed earlier; correct?

3 A I would have to look back at the date.

Matlock dep tran  
4 The seventh -- three days, yes.  
5 Q And there Mr. Ely writes, "Hey, David. I  
6 know that budget shortfalls are always hard to deal  
7 with and it's impossible to run an institution without  
8 balanced books and a clear focused team and mission,  
9 but is there any other area that could be cut without  
10 having folks lose their jobs while continuing to offer  
11 great services and ROI for our citizens? Is this our  
12 absolute only way forward?"  
13 That's what he said, isn't it?  
14 A Yes.  
15 Q And Mr. Ely later sent a letter to  
16 certain board members, including Gene Couch; correct?  
17 MR. HARDY: Object to form. Vague.  
18 BY MR. GRIMES:  
19 Q Go ahead and answer the question.  
20 A I'm not aware of what Mr. Ely did.  
21 Q Do you know whether Mr. Ely later sent a  
22 letter to certain board members, including Gene Couch?  
23 A No, no.  
24 (1/29/18 email string between David  
25 Matlock and Elizabeth Griffin marked as  
Matlock Exhibit Number 10)

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1 BY MR. GRIMES:  
2 Q Exhibit 10 is another email string;  
3 correct?  
4 A Yes.  
5 Q In the email at the bottom of the page,  
6 the email from you to Elizabeth Griffin dated  
7 January 29, 2018, in the third sentence, you write,  
8 "All major key performance indicators reflect an

Matlock dep tran  
9 increase in Center activity and income since my  
10 arrival."

11 Was that true?

12 A Yes.

13 Q And then the email from Elizabeth Griffin  
14 to you at the top of the page, January 29, 2018, she  
15 writes, "David, I believe all we need for you to do at  
16 this time is schedule the call with Joshua Ely. The  
17 three of us should probably chat right before that  
18 call."

19 Who are the three of you?

20 A Looks like she's copied Senator Carrico.  
21 So I think that her thoughts there were  
22 that if it's, because of FOIA, she, you know, it  
23 couldn't be a conversation with the entire board.

24 Q So the three players that she's talking  
25 about are herself and Bill Carrico and you; correct?

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1 A Yes, the chairman, um-hum.

2 Q "The argument Duffy is making is that if  
3 revenues and activity are up at the Center, then why  
4 eliminate three positions."

5 And she tells you, "Don't respond to that  
6 now"; correct?

7 A That's what it reads, yes, sir.

8 Q "But you need to be prepared to address  
9 it with Joshua Ely"; correct?

10 A Correct.

11 Q You respond, "I got it," with two  
12 exclamation points; correct?

13 A Um-hum.

Matlock dep tran  
14 Q "Easy to explain. I got this"; correct?

15 A That's true.

16 Q Who is Steve Cochran?

17 A He is a board member that represents --  
18 he's -- I believe he represents -- he's a Governor  
19 appointee. He represents the region of business and  
20 industry.

21 Q Did he state that your termination of  
22 Duffy Carmack gave Mr. Carmack grounds for a  
23 retaliation suit against the Center?

24 A I'm not sure if he stated exactly that,  
25 because we didn't terminate Mr. Carmack. It was never

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1 a termination.

2 Q It was a layoff?

3 A It was a WTA process, yes, sir.

4 Q When's he coming back to work for the  
5 Center?

6 A I'm not going to fill in his position,  
7 sir.

8 Q Even as a janitor or something?

9 A He could apply. We have an opening.

10 (1/4/18 email string between Elizabeth  
11 Griffin and Steven Cochran, Senator  
12 Carrico, David Matlock re: HEC Update to  
Board Members marked as Matlock Exhibit  
Number 11)

13 BY MR. GRIMES:

14 Q Exhibit 11.

15 well, would he have to interview with  
16 you?

17 A No. He'd interview with a committee.  
18 I try not to be involved in the hiring

Matlock dep tran  
19 process, you know. We have a -- when we were UVA and  
20 now with DHRM, there's pretty strict guidelines on how  
21 that works and there's a process and a matrix and boxes  
22 have to be checked. And so I, you know, I don't  
23 micromanage that way.

24 Q Exhibit 11 is another string of emails;  
25 correct?

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1 A Yes, sir.

2 Q Let's look at the email at the bottom of  
3 the second page of this exhibit --

4 A Okay.

5 Q -- from Steve Cochran to Elizabeth  
6 Griffin copied to Bill Carrico and you and Mark  
7 Herring; correct?

8 A Correct.

9 Q And Mark Herring, for the record, is the  
10 Attorney General for Commonwealth of Virginia; correct?

11 A That's correct.

12 Q And there he writes, dated January 4,  
13 2018, "As a member of the board and a human resources  
14 professional, I am very concerned that this action will  
15 give Mr. Carmack grounds to file a charge of  
16 retaliation in response to him being --" excuse me  
17 "-- him raising concerns about the working conditions  
18 at the Center.

19 Does that refresh your recollection about  
20 Mr. Cochran saying that he thought Mr. Carmack may have  
21 grounds for a retaliation suit? Do you remember now?

22 A Well, yes, sir. This email is made to  
23 Elizabeth, and I was copied. But he never made a

24 Matlock dep tran  
direct statement to me.

25 Q But you read the emails you're copied on,  
133

1 do you not?

2 A I do most of the time. I can't say I  
3 read them all.

4 Q Cheryl Carrico also expressed concern  
5 about what you were doing, didn't she?

6 A Yes, sir. Cheryl Carrico, Josh Ely and  
7 Steve Cochran were the three that needed further  
8 explanation.

9 (January 2018 email string between Cheryl  
10 Carrico, Elizabeth Griffin, Senator  
Carrico, David Matlock re: HEC update to  
11 Board members marked as Matlock Exhibit  
Number 12)

12 BY MR. GRIMES:

13 Q Exhibit 12, if you look at the second  
14 page, there's an email from Cheryl Carrico to you dated  
15 January 4, 2018; correct?

16 A Yes.

17 Q And there she writes, after talking about  
18 Internet connectivity issues in Pennsylvania, she  
19 writes, "Each meeting I have attended and at points in  
20 between you report the finances are being good."

21 And that was true, wasn't it?

22 A Yes.

23 Q If it were not true, you would not have  
24 said it, would you?

25 A No. Finances were good.

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1 Q "That the Center's revenue is up and  
2 costs are down."



3 And you said that, didn't you?

4 A Yeah. We had -- nongeneral revenue has  
5 gone up and nonvariable, nonfixed costs, we've worked  
6 on getting those under control.

7 Q You also reported being understaffed by  
8 positions --

9 A Yes.

10 Q -- at the last two board meetings.  
11 And that's what you have said; isn't it?

12 A That is correct.

13 Q "The \$108,058," that's one zero eight,  
14 comma, zero five eight, "mentioned below is less than  
15 the total salaries will be, likely much less when  
16 benefits are included, so the number of people and  
17 positions is odd to me. The positions of two people  
18 are as the leads of those groups. It seems that these  
19 positions are essential to the Center's business, and I  
20 am unclear how these positions are the ones to  
21 eliminate."

22 That's what she said, isn't it?

23 A That is what she said.

24 Q So some members of the board did not at  
25 all agree with what you were doing, did they?

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1 A Three out of 22 asked for additional  
2 clarification.

3 Q And opposed what you were doing?

4 A I believe, sir, that at the conclusion of  
5 the conference call, all three said they understood.

6 Q You believe that?

7 A I do, because they never mentioned it at

8 another board meeting.

9 Q Was there also a discussion of  
10 restructuring the board about the same time?

11 A I don't think they've ever talked about  
12 restructuring the board.

13 The board? The governing board?

14 (1/7/18 and 4/1/18 emails between Danny  
15 Dixon and David Matlock RE: HEC Update  
16 to Board members marked as Matlock  
Exhibit Number 13)

17 BY MR. GRIMES:

18 Q Exhibit 13 is an email from Danny Dixon  
19 to you of January 7, 2018.

20 who is Danny Dixon?

21 A He's a former board member.

22 Q He writes, "David, after our last  
23 conversation and my receipt of a letter from the  
24 Governor, I appear a bit uncertain about where I stand  
25 relative to the board. I understand you to say that

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1 the Governor was planning to restructure the board."

2 A That's what he writes.

3 Q Did you tell somebody that the Governor  
4 was planning to restructure the board?

5 A No. The Governor, his appointees have a  
6 term limit.

7 And obviously what happened there is  
8 Danny, his term expired, and he got a letter from the  
9 Governor, and he was replaced by somebody else.

10 Q And do you know where the letter from the  
11 Governor is?

12 A No, sir. That would -- I would not be

13 included.

14 I probably may have gotten copied. My  
15 administrative assistant may have gotten copied.

16 But I don't routinely see those. I  
17 sometimes see the press releases, because every time  
18 the Governor appoints people to boards and agencies  
19 across the State, his press secretary does a press  
20 release, and sometimes I get those.

21 Q where is your response to this email?

22 A I'm not sure if there was one, other than  
23 maybe a phone call.

24 Danny was coming in and out of the  
25 building quite a bit then. He was leaving a job at the  
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1 Center, and so --

2 Q Do you have a memory of responding to  
3 this email?

4 A No.

5 Q Is there a reason why HR was not switched  
6 from UVA to DHRM until after the alleged restructuring  
7 was done?

8 A Oh, yeah. Transfer from UVA to DHRM was  
9 not initiated by the Southwest Virginia Higher  
10 Education Center, our agency. We weren't involved. We  
11 didn't have a choice. That time line was set by UVA.

12 Q Rachel Fowlkes was identified in  
13 defendant's discovery responses as having knowledge  
14 that the Center was developing a WTA plan.

15 Are you aware of that?

16 A Yes. I consulted with Rachel.

17 when you do something of this magnitude,

18 I wanted to make sure that the plan was going to not  
19 only make us efficient and effective, but sustainable.  
20 I valued the opinion of the former executive director,  
21 and I wanted to make sure that I got her -- her private  
22 counseling feedback on that.

23 Q When did you do that?

24 A I believe it was in February of '17.

25 Q How --

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1 A So February of -- yeah, February of '17.

2 Q How did you do that?

3 A She was -- I believe she was there taking  
4 a class at the Center, and I asked her if we could have  
5 a conversation. We had several conversations during  
6 that time; some over lunch, some in my office, some  
7 just at a couch and chair in the lobby.

8 I believe that conversation took place in  
9 my office.

10 Q Are you aware of any emails to or from  
11 Dr. Fowlkes about the WTA plan?

12 A No.

13 Q Similarly with respect to Chris Fields,  
14 she was employed at the Center before Carmack; correct?

15 A That's correct.

16 Q And she was identified by the defendants  
17 as someone having knowledge of the WTA plan.

18 What did she know about it?

19 A Before my first trip -- okay. So if we  
20 go back to the summer of '16, I received correspondence  
21 from the Governor's Office about fiscal year '15,  
22 fiscal year '16, fiscal year '17 and potentially fiscal

23 year '18 budget reductions, and they were asking for  
24 our plans.

25 We got a reminder in September of '16

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1 before I had been there a year, so I -- I reached out  
2 to Miss Fields to ask her how she might respond to this  
3 in her history.

4 And then in the early spring or late  
5 winter, February, before my first trip to DHRM and DPB,  
6 I asked her for templates of how she did the last one  
7 at VHCC; could I see her templates so I had a good  
8 understanding. And I had her to walk me through the  
9 process about my responsibilities to DPB and DHRM.

10 Q Miss Fields was moved to the college by  
11 Dr. Fowlkes; correct?

12 A You mean she was hired by Dr. Fowlkes?

13 Q She was moved to the college by  
14 Dr. Fowlkes; correct?

15 A "She was moved," I don't understand that  
16 question.

17 Q You don't?

18 A Because Dr. Fowlkes had nothing to do  
19 with the college because we're referring to VHCC today.

20 Q Dr. Fowlkes -- I didn't mean to cut you  
21 off.

22 A Okay.

23 Q Finish your answer.

24 A Dr. Fowlkes had no authority at the  
25 community college, so she couldn't move Chris.

140

1                   Q       Matlock dep tran  
Chris Fields left the Center, did she  
2   not?

3                   A       She did.

4                   Q       And went to work where?

5                   A       At the community college.

6                   Q       Did you ever consider bringing Fields  
7   back after firing Mr. Carmack?

8                   A       No.

9                   Q       Why are you getting Chris Fields' input  
10   into decisions at the Center when she was a former  
11   employee?

12                  A       For the same reason I sought Rachel  
13   Fowlkes. They were there from the beginning,  
14   basically. They had a long history. They understood  
15   institutional history, policies and procedures,  
16   sustainability.

17                   As I developed my WTA plan, I needed to  
18   ask people who had a long history, will this work, is  
19   there a flaw. I mean, I'm not going to do anything  
20   without good, good advice.

21                   (5/25/17 email from Christine Fields to  
22                   David Matlock with attached VHCC  
23                   Restructuring Proposal Final October  
                          2014 marked as Matlock Exhibit Number  
                          14)

24   BY MR. GRIMES:

25                  Q       Exhibit 14 is an email from Chris Fields  
141

1   to you dated May 25, 2017, and she writes there,  
2   "David, here's the proposal sent to VCCS in 2014";  
3   correct?

4                   A       That is correct.

5                   Q       And so you solicited this information

6 Matlock dep tran  
from Chris Fields; correct?

7 A Um-hum.

8 THE COURT REPORTER: I'm sorry?

9 THE WITNESS: Yes. I needed to write a  
10 proposal of my own, and I just sought her guidance.

11 (5/25/17 email from Christine Fields to  
12 David Matlock re: VHCC's Cover Letter to  
13 DHRM for WTA Request and VHCC Memorandum  
14 of 11/19/14 from Debbie Rigdon to Laura  
McClellan, Dr. Christopher Lee and Dr.  
Gene C. Couch, Jr. RE: VHCC Eligibility  
for VRS Coverage of WTA Costs marked as  
15 Matlock Exhibit Number 15)

16 BY MR. GRIMES:

17 Q Did you ever discuss with Miss Fields  
18 what jobs you were eliminating?

19 A I discussed with Miss Fields about the  
20 possibility of eliminating up to six positions, and if  
21 I did such a thing, based on her 15 years of  
22 experience, was that sustainable.

23 Q what does "sustainable" mean?

24 A Is it going to work.

25 Q Could you sell it?

142

1 A Not that I could sell it. I wasn't  
2 interested in selling it. I was interested in being  
3 efficient and effective and if we made these changes  
4 with increased revenue by decreasing expenses, was  
5 this -- was this model, could the -- could the workload  
6 be sustained by -- without hiring anybody else.

7 Q So we have Exhibit 15.

8 Did you ever seek input from your chief  
9 financial officer about eliminating the positions?

10 A No.

Matlock dep tran  
11 Q You didn't want to know what he had to  
12 say, did you?  
13 A I had reason to believe that he would  
14 react negatively.  
15 Q If you wanted to know what he had to say,  
16 you would have asked him; correct?  
17 A If I wanted to know his opinion on the  
18 WTA, yes, sir, I would have asked him.  
19 Q Okay. And why did you have reason to  
20 believe that he would react negatively?  
21 A Things I had been told in the community.  
22 Q By whom?  
23 A I can't recall the gentleman's name right  
24 now.  
25 Q Are you sure you can't recall it?

143

1 A It was at a party.  
2 Q And you recall it, don't you? You know  
3 who it is?  
4 A No. I recall a statement that was made.  
5 The fact that a WTA was going to be  
6 executed did not require input from the CFO.  
7 Q That's not what I asked you.  
8 You recall the gentleman's name, don't  
9 you?  
10 A No.  
11 Q It was at a party. Where?  
12 A I don't recall.  
13 Q In the State of Virginia somewhere?  
14 A Probably.  
15 Q At somebody's house?



Matlock dep tran  
16 A I believe it was a reception.  
17 Q A reception where?  
18 A I believe it was in Bristol.  
19 Q Where in Bristol?  
20 A It could have been one of several places.  
21 It's been so long ago...  
22 Q Why is your memory foggy on this  
23 particular point?  
24 A Because I didn't take it -- take merit in  
25 it. I just -- you know, I blew it off as a party joke. 144

1 Q Um-hum. And what was the joke? What did  
2 he say?

3 A Mr. Carmack had made a comment that he  
4 would make sure that he had my job within a year and I  
5 would be gone.

6 Q Um-hum. And that's what the gentleman  
7 said to you?

8 A That's what I heard. I'm not quite  
9 sure -- I'm assuming it was a man's voice. I  
10 overheard. I mean, it wasn't like I got dragged, "Hey,  
11 David, let me tell you something."

12 I heard someone talking in which I  
13 overheard, we'll call it, water faucet gossip.

14 Q But you said a moment ago that the  
15 gentleman said to you Mr. Carmack will have your job  
16 within a year.

17 A That's what I heard, yeah.

18 But I didn't let that affect my  
19 decisions. I just knew that -- I just knew that  
20 because Mr. Carmack's job was so intertwined with the

Matlock dep tran  
21 finances of the Center, that not involving him was the  
22 best way.

23 Q But that's not my question.

24 A Okay.

25 Q I'm asking you about the party.

145

1 were you there with your wife?

2 A No. It wasn't a -- it was a reception.

3 Q Reception for what?

4 A I have no idea. I attend quite a few  
5 galas and events.

6 Q And when you heard the statement said,  
7 did you look and see who was making the statement?

8 A No. I just walked away because I've  
9 learned a long time in life that I shouldn't focus on  
10 things I can't control.

11 Q And the party was in Bristol.

12 Do you remember the month?

13 A No.

14 Q Or the year?

15 A No. It may have been -- it was very  
16 close to my appointment, I mean, like the first couple  
17 weeks I had gotten the job.

18 Q That much you're sure of.

19 A Well, it was early on in my  
20 administration. It was early. It was early.

21 Q Do you remember anything else about the  
22 party --

23 A No.

24 Q -- or can you tell us one other human who  
25 was there? Even one.

146

1           A     I assume there was, you know, council  
2 members if it was in Bristol, I mean, you know.

3           Q     So your testimony is you went to a  
4 reception; correct?

5                     You say yes.

6           A     Yes, I went to a event.

7           Q     Now it's an event. You went to an event;  
8 correct?

9           A     That's correct.

10          Q     And you can't remember a single person  
11 who was there other than yourself?

12          A     Well, I mean, there were council members  
13 there, there were community members on. I mean, I  
14 could go and on. There was board members of the  
15 Foundation there. I'm sure, you know, it was -- it was  
16 an event like that, an event that had hundreds of  
17 people at it.

18          Q     Looking back, what event would council  
19 members and board members and you have been at about  
20 that time?

21          A     My best guess, if I had to guess -- and,  
22 again, I just blew this off -- would have been the  
23 Bristol Chamber of Commerce Award Dinner. It's held  
24 every December. Hundreds, hundreds of people there. I  
25 think I was introduced as the new executive director.

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1           Q     Do you remember that much?

2           A     No. I just said I think. I don't  
3 recall.

4                     But something had to happen to make me

5 the topic of some guys having, you know, conversation  
6 around a water faucet.

7 Q And are you certain that any one person  
8 was there? Can you give us one, just one name?

9 A I'm sure the president of VHCC was there.

10 Q I can't understand you, sir.

11 A I'm sure the president of VHCC was there.  
12 I would assume he would be there.

13 Q You would assume or you have a memory of  
14 him being there?

15 A I'll say I believe he was there.

16 Q Could you be wrong?

17 A Oh, yes, sir, I can always be wrong.

18 Q So what did you discuss with Jeff Webb  
19 about eliminating Duffy Carmack's job?

20 A Well, Jeff has been at the Center since  
21 day one. And in the WTA proposal, I consulted him to  
22 see if we did these things, if these things were done,  
23 would the Center be sustainable, can that workload be  
24 distributed.

25 Q Is that what you discussed with Jeff

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1 Webb?

2 A I believe it to be, yes, sir.

3 Q Well, what -- now, do you have a memory  
4 of it or you just believe it?

5 A Well, I mean, I had several meetings with  
6 Jeff where I would, because he had been there since the  
7 day the Center opened, where I would ask him to  
8 clarify, you know, how operations worked, how business  
9 flowed. I would explain my understanding, was my

10 understanding correct, am I missing something here.

11 Q Let's try to get at it this way. What  
12 did Jeff Webb tell you about eliminating Duffy  
13 Carmack's job?

14 A Well, I think that he probably said that  
15 my plan as I presented it to him was sustainable.

16 Q You think that he probably said that?

17 A That's correct.

18 Q In -- in other words, you don't remember;  
19 correct?

20 A Well, that's what I remember.

21 Q What did you discuss with Kathy --

22 A Hietala.

23 Q Hietala.

24 -- about eliminating Duffy Carmack's job?

25 A Again, discussions with her centered

149

1 around the WTA process and not just one position;  
2 multiple positions. She had been there a very long  
3 time, been the administrative assistant to Dr. Rachel  
4 Fowlkes.

5 Q What did she tell you?

6 A She thought that the plan would probably  
7 be sustainable.

8 Q What did you discuss with Joyce Brooks  
9 about eliminating Duffy Carmack's job?

10 A I really didn't discuss much with Joyce  
11 Brooks because she was part of the process. And so,  
12 therefore, I kept her out of the majority of the  
13 conversations. I didn't bring her into the  
14 sustainability piece at all.

15 Q Adam -- go ahead.

16 A She was on a need-to-know basis because  
17 she was in HR, so I just didn't want her to know  
18 things.

19 Q You didn't want her to know things  
20 because she was in HR.

21 A I didn't want her to know things because  
22 she was part of the process, is the primary reason.

23 Q What did you discuss with Adam Tolbert  
24 about eliminating Duffy Carmack's job?

25 A Again, I had discussion with Adam about 150

1 the entire WTA process with multiple positions to make  
2 sure that my decision-making, my rationale, was solid.

3 Q Did you tell Tim Sadler, the OSIG  
4 investigator, that you were firing or had fired  
5 Carmack?

6 A No.

7 Q You never did that.

8 A I told Mr. Sadler that, when he called  
9 me, before he could say probably a sentence, that I was  
10 in the process -- I was in the middle -- this was in  
11 October of '17 -- that I was in the middle of a WTA  
12 process; should I stop.

13 Q Should you stop what?

14 A Should I stop the WTA process.

15 Q Should you fire or not fire Duffy  
16 Carmack?

17 A No, sir, should I stop the --  
18 Mr. Carmack's name was never mentioned by Mr. Sadler.  
19 It was the WTA process; should I stop the WTA process

20 until the investigation was over.

21 Q Was Mr. Carmack's name mentioned by you?

22 A I mentioned everybody involved in the WTA  
23 process.

24 Q Including Duffy Carmack?

25 A Yes, of which Mr. Sadler said -- he asked  
151

1 for my timeline, and then he said, "Continue with your  
2 WTA." He would not disclose who had made the call.

3 Q But you knew Duffy Carmack had made the  
4 call; correct?

5 A No, I did not know that.

6 Q You didn't?

7 A No.

8 Q You never knew it?

9 A I knew it on January 4th of 2018 when  
10 Mr. Carmack looked me in the eye and said, "You know  
11 I'm the one that called."

12 Q Is your memory clear on that point -- is  
13 your memory clear on that?

14 A I remember because of -- yes.

15 Q But you don't remember who stated at the  
16 reception that -- reception or event or whatever it  
17 was, that Duffy Carmack would have your job within a  
18 year?

19 A It was at a party. It was -- I had been  
20 on the job early on. It didn't bother me.

21 Q It didn't bother you.

22 A No.

23 Q Not at all.

24 A No. I gave Mr. Carmack outstanding

25 evaluations.

152

1 Q Who have you hired since the time you  
2 started at the Center?

3 A Hired?

4 Q Hired or promoted.

5 A The primary hire would be Joe Mitchell.  
6 He is now the maintenance facilities manager.

7 We hired a couple of hourly people in  
8 conference services. We've hired a couple people in --  
9 we had a couple work students. We just hired a new  
10 loans collection person in the tobacco loan collection  
11 area. We've had a couple of hourly people for the  
12 testing center.

13 Q And you promoted Adam Tolbert to head of  
14 Human Resources; correct?

15 A He is in charge of HR, yes.

16 Q And you were involved in that decision;  
17 right?

18 A Yes, it was part of the WTA process.

19 Q That he would become the head of HR?

20 A That's correct.

21 Q And his HR experience was what before  
22 that?

23 A He had been training, had gone through  
24 all the training with UVA, been signed off by UVA, gone  
25 through and gotten their approval, we had gotten their  
153

1 letter of approval and --

2 Q In other words, Adam Tolbert's job at



Matlock dep tran  
3 Human Resources at the Center is his first job in HR;  
4 correct?  
5 A Yes.  
6 Q And Ricky Rhley, R-h-l-e-y --  
7 A Nicky.  
8 Q -- became the assistant manager of  
9 information technology; correct?  
10 A I'm not quite sure if that's exactly her  
11 title. She is over information systems. She's  
12 day-to-day manager of IT operations.  
13 Q And you put her in that position;  
14 correct?  
15 A Part of the WTA process was trying to  
16 explain to DHRM how we would distribute duties in an  
17 equitable manner to make us more efficient and  
18 effective so that we would be sustainable and, yes,  
19 that was a result of that.  
20 Q That's a yes, isn't it?  
21 A Yes.  
22 Q And Jeff Webb became IT manager and  
23 director of operations; correct?  
24 A He was already IT manager. He just  
25 assumed some responsibilities in operations.

154

1 Q As the director of operations, yes.  
2 And you put him in that position;  
3 correct?  
4 A Yes.  
5 Q And Sonia Vanhook was put in the new  
6 position involving education programs offered by the  
7 Center; correct?

8                   A       Matlock dep tran  
9                   Q       And Joe Mitchell was put into the  
10                  position of director of maintenance; correct?  
11                  A       He was put in that position in the summer  
12                  of '17, I believe.  
13                  Q       And you made all those promotions;  
14                  correct?  
15                  A       Yes.  
16                  Q       Have you unfrozen any positions while  
17                  working for the Center?  
18                  A       Yes, we -- we have some positions that we  
19                  would like to fill in the very near future.  
20                  Q       What positions have you unfrozen?  
21                  A       We had a marketing position that was  
22                  frozen and we needed -- we needed, you know, to  
23                  increase our awareness, increase -- so marketing is  
24                  key.  
25                  Q       Marketing is key; correct? It's a very 155

1                  important position, isn't it?  
2                  A       Um-hum.  
3                  Q       Say yes.  
4                  A       Yes.  
5                  Q       And that position is now unfrozen and  
6                  you're looking for a marketing person; correct?  
7                  A       We have not advertised yet.  
8                  Q       But you're looking for a marketing  
9                  person, aren't you?  
10                 A       At some point in the future, yes, sir, we  
11                 will attempt to, if the budget allows, we will attempt  
12                 to hire a marketing position.

Matlock dep tran  
13 Q what other positions have you unfrozen?  
14 A I believe that's the only one I've  
15 unfrozen, sir.  
16 Q Kathy Hietala?  
17 A Yes, sir.  
18 Q Does her mother work at the Center?  
19 A No, Kathy Heitala's mother does not work  
20 at the Center.  
21 Q Hannah Hietala, who is that?  
22 A She is the conference services event  
23 planner.  
24 Q And just, by chance, are Hannah Hietala  
25 and Kathy Hietala related?

156

1 A Yes.  
2 Q In what way are they related?  
3 A Kathy is the mother, Hannah is the  
4 daughter.  
5 Q When did Hannah come to work for the  
6 Center?  
7 A Mr. Carmack hired her when he was  
8 interim.  
9 Q Did you unfreeze a position so that she  
10 could work there at the Center?  
11 A No.  
12 Q Did you unfreeze a position to put her in  
13 another position?  
14 A No.  
15 Q Was there a time when you told Hannah  
16 that she would have a full-time position at the Center?  
17 A No.

Matlock dep tran  
18 Q How long have you known Joe Mitchell?  
19 A I've known him since 1986.  
20 Q And you know he's a Republican; correct?  
21 A I did not know that.  
22 Q As you sit here today, you did not know  
23 he was a Republican?  
24 A No.  
25 And Joe changes when the wind blows.

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1 Q Was he interviewed by a selection  
2 committee?  
3 A Yes, he was.  
4 Q Who sat on the committee?  
5 A Vice chairman Saul Hernandez, Joyce  
6 Brooks, I think Doug Viers was on that committee, and I  
7 believe there was one other community member at large.  
8 Q Did you approve Joe Mitchell's hire?  
9 A The approval was given at UVA, but, yes,  
10 I endorsed it.  
11 Q Did Joe Mitchell have a contract with the  
12 college?  
13 A Joe Mitchell was a faculty member at  
14 VHCC, so, yes, he had a -- I think faculty members work  
15 on a 12-month contract.  
16 Q Did Duffy Carmack ever ask you why  
17 Mitchell would disappear out of payroll?  
18 A No.  
19 Q Did you ever tell Mr. Carmack to leave it  
20 alone?  
21 A No.  
22 Q Did you and Joyce Brooks ever speak about

Matlock dep tran  
23 what to do with Mitchell's employment?

24 A The fact that we were going to hire him.

25 Q Did Miss Brooks ever tell you that Duffy  
158

1 Carmack was asking about Mitchell?

2 A No.

3 Q When you posted Mitchell's position, did  
4 you say it had to be a current UVA employee?

5 A I don't believe so.

6 Q Could you be wrong about that?

7 A I could be. But we interviewed people  
8 who were not current -- so I would say no, we did not.

9 Q Was Mitchell officially hired as a  
10 full-time employee about December 15, 2017?

11 A Yes.

12 Q Do you know an Ely Hietala?

13 A Yes.

14 Q Who is that?

15 A Kathy's son.

16 Q Did you hire him, too?

17 A No. He was working -- Ely, Hannah and  
18 Kathy were all employed at the Center upon my arrival.

19 Q When you were hired, was Ely working as a  
20 wage employee, setting up and taking down for large  
21 events?

22 A Yes.

23 Q How old is Ely?

24 A 21, 22, something like that.

25 Q And is he a college dropout?

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1 A No, he's a college graduate.

2 Q From which college?

3 A I believe Virginia Highlands Community  
4 College.

5 Q And you're certain of that?

6 A Yes.

7 Q After you were hired, did you and Joe  
8 Mitchell bring Ely into a full-time position with  
9 benefits?

10 A Joe Mitchell would have nothing  
11 whatsoever to do with that.

12 So the answer to that question would be  
13 no, Joe Mitchell and I did not.

14 Q Was the position that Ely filled posted?

15 A Yes.

16 Q And you're certain of that?

17 A Yes.

18 Q So there are documents concerning that;  
19 correct?

20 A Yes.

21 Q Who were the candidates for that  
22 position? Who was interviewed?

23 A I don't know. That -- we had a committee  
24 again. That was through UVA. And UVA had very strict  
25 rules. There was a matrix. There had to be a

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1 committee. The people who served on the committee had  
2 to go through training.

3 And so my role was simply, in all hires,  
4 is after then UVA or DHRM now, after they do the matrix  
5 and they -- interviews are done and the proposal, the  
6 actual hire comes from UVA and now DHRM. They actually

7 make the formal request to the employee.

8 Q who all has been promoted from part time  
9 to full time since you've been at the Center?

10 A Part time to full time? I'm going to  
11 guess it would be Ely. Again, it wasn't truly a  
12 promotion. He applied for a vacant position.

13 Q Anybody else?

14 A I don't -- I don't recall anybody else.

15 Q Did you add a part-time grant writer to  
16 the staff?

17 A No.

18 Q Have any Center employees received a  
19 raise since you've been hired?

20 A Yes.

21 Q The budget permitted that?

22 A Yes. All --

23 Q Have you received a raise?

24 A The only raise I've received is whatever  
25 the Governor puts in the budget, you know, when State

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1 employees get 2 percent.

2 Q And, in fact, Duffy Carmack received a  
3 raise after you initiated the WTA process; correct?

4 A I believe everybody at the Center in my  
5 agency got a raise during that time because the  
6 Governor's budget mandated a 2 or 3 percent pay raise  
7 that year for fiscal year -- that may have been '18,  
8 FY18.

9 Q Did you ever consider just cutting out  
10 the raises rather than firing Duffy Carmack?

11 A No.

12 Q It never occurred to you?

13 A I never fired Mr. Carmack. Mr. Carmack  
14 was not fired.

15 Q Okay. He was just laid off?

16 A Yes.

17 MR. KINCER: Asked and answered  
18 repeatedly.

19 BY MR. GRIMES:

20 Q Did you receive -- you received a  
21 3 percent raise on July 10, 2017; correct?

22 A Okay. Yes, I think everybody did.

23 Q And you had already started the process  
24 to eliminate Carmack's job due to financial reasons at  
25 the time you received a raise; correct?

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1 A Everyone at the Center got the mandated  
2 3 percent raise.

3 The restructuring, WTA, had to do with  
4 the Commonwealth of Virginia's budget shortfall, not  
5 the Center.

6 Q The 3 percent raise was how much money  
7 for the Center employees?

8 A 3 percent of 700,000. So what is that,  
9 21,000?

10 Q And who did you negotiate your salary  
11 with?

12 A On my date of hire?

13 Q Before your date of hire, on your date of  
14 hire.

15 A Yeah. Senator Carrico had -- and  
16 Miss Brooks were in the room. And Senator Carrico made



17 an offer, and I said, I said, "Wait a minute. The  
18 paper said 150." He said, "We're not going to pay  
19 that." He said, "We're not authorized to pay that.  
20 Your salary," he told me, "was mandated by the Code of  
21 Virginia," and he said, "Here's what the Code says you  
22 can be paid, and this is all you can be paid." And I  
23 said, "I don't have a choice?" He said, "You don't  
24 have a choice. This is what you'll be paid," and I  
25 couldn't be paid any more than that unless the

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1 Foundation paid it.

2 But with Commonwealth of Virginia general  
3 fund money, it is in the Code what agency heads make.

4 Q But you had this conversation with  
5 Senator Carrico; correct?

6 A That's correct.

7 Q Have you told people that you and Carmack  
8 did the same thing for the Center?

9 A That me and Carmack did the same thing?

10 Q Yeah.

11 A No. Mr. Carmack never did what I do.

12 Q Did you ever consider eliminating your  
13 position to save money?

14 A I'm not so sure the Code of Virginia  
15 would allow that.

16 Q That's a different question.

17 Did you ever consider eliminating your  
18 position to save money?

19 A No.

20 Q You never considered resigning yourself?

21 A No.

22 Q Or reducing your pay?

23 A No.

24 Q Did you try to find other work for Duffy

25 Carmack within the State of Virginia?

164

1 A No.

2 Q Did you ever consider making Debbie

3 Hensley and Carmack part time?

4 A No.

5 Q What was Hensley doing before

6 Mr. Carmack was fired?

7 A She took care of the daily operations.

8 She was the business manager.

9 Q You would agree one person has performed

10 the duty of the CFO from the time the Center was open

11 until Mr. Carmack was fired; correct?

12 A No, I would not.

13 Q You would not agree with that?

14 A No.

15 Q From 1996 to 2007, that position was

16 called budget manager; correct?

17 A I would -- if that's what your research

18 shows. I don't know. We had -- Chris Fields occupied

19 a business manager position.

20 Q From 1996 to 2007, Chris Fields had that

21 position; correct?

22 A No, sir. No, that's not correct.

23 Q From 2007 to 2012 the position was called

24 director of finance and legislative affairs, and Chris

25 Fields held the job, correct?

165

1           A     Okay, yes. Chris Fields didn't leave  
2     until 2012. I'm not sure what she was always called,  
3     but she was the business manager until 2012.

4           Q     And Duffy Carmack held the job from 2012  
5     until January of 2018, and it was called director of  
6     finance; correct?

7           A     I'm not sure if that was only internal.  
8     He was considered to be the CFO.

9           Q     And now Debbie Hensley has the job, and  
10    it's called director of finance; correct?

11          A     No, sir. I believe she's called business  
12    manager.

13          Q     Are you certain of that?

14          A     Fairly certain, yes, sir.

15          Q     Have you kept in contact with Joyce  
16    Brooks since she retired?

17          A     All retirees are invited to retiree and  
18    business building functions. So she came to the  
19    Christmas party. We had a retirement party for her.  
20    So, yes.

21          Q     She had a retirement party; correct?

22          A     Yes.

23          Q     And she's never returned to work since  
24    she retired; correct?

25          A     That's correct.

166

1           Q     Neither as a salaried employee or as a  
2     wage employee; correct?

3           A     No, she has not returned.

4           Q     Janet Williams, do you know her?



Matlock dep tran

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168

A F T E R N O O N   S E S S I O N

2

- - -

3

(December 2016 to May 2017 email string  
between Donna Kaufmann, David Matlock,  
Adam Tolbert, Michelle Leigh Small,  
Joseph Esposito RE: Time Sensitive:  
Southwest Virginia Higher Education  
Center Workforce Transition Act marked as  
Exhibit Number 16)

4

5

6

7

8

CONTINUED EXAMINATION

9

BY MR. GRIMES:

10

Q Back on the record.

11

You've been handed Exhibit 16,

12

Mr. Matlock.

13

Take a look at the bottom of the page.

14

A Okay.

Matlock dep tran  
15 Q It's an email string, again, the bottom  
16 of the page is from Donna Kauffman to Joe Esposito, and  
17 she writes, "Hi Joe." Then in the second paragraph,  
18 "One or two of the retirees may be returning to work."

19 Do you know who that is?

20 A No. We asked for clarification if at  
21 some point down the road any of the three, if their  
22 services were needed in something specialized, but I --  
23 I don't know what that means.

24 Q Who were the retirees?

25 A At that point, no one.

169

1 Q Who were the retirees that are being  
2 referred to in this writing?

3 A Well, potentially, Mr. Carmack,  
4 Miss Williams, Miss Brooks.

5 Q Okay. So three retirees. Got it.  
6 And Miss Williams was about how old?

7 A I'd be afraid to guess.

8 Q Miss Brooks was about how old?

9 A I know they are in their 60s, is what I  
10 would say.

11 Q Of retirement age, in any event?

12 A I would assume so. I have not seen their  
13 birth certificates.

14 (1/23/18 email string between David  
15 Matlock and Adam Tolbert re: Janet  
16 Williams Job Description and General  
Position Information marked as Matlock  
Exhibit Number 17)

17 BY MR. GRIMES:

18 Q Exhibit 17, again, an email at the top of  
19 the page from David Matlock to Adam Tolbert,

Matlock dep tran  
20 January 23, 2018, reference Janet Williams' job  
21 description.

22 why did Adam Tolbert send you Janet  
23 Williams' job description after she retired?

24 A I don't remember.

25 Q would you agree that in November 2016

170

1 when you would talk about what you now call the WTA  
2 plan, that you would call it retirement/layoff in  
3 emails?

4 A WTA. I tried to refer to it as WTA.

5 Q Did you ever refer to it as, quote,  
6 retirement/layoff, closed quote, in emails?

7 A I may have.

8 Q Did Mr. Carmack say anything to you about  
9 pre-selecting employees in violation of agency policy?

10 A Never.

11 Q Did you tell Mr. Carmack at any time  
12 something like "Bill Carrico has my back"?

13 A Never.

14 Q Have you ever told any employee that Bill  
15 Carrico has your back or words to that affect?

16 A Never.

17 Q Have you ever told an employee not to  
18 speak to Mr. Carmack?

19 A No.

20 Q Did you ever tell Mr. Carmack that he  
21 belonged to the wrong party?

22 A No.

23 Q Did you ever hear anyone say something  
24 like, "It's better to be a Republican than a Democrat"?

25 A Matlock dep tran  
No.

171

1 Q Now, you've known Adam Tolbert for a  
2 number of years; correct?

3 A Yes.

4 Q Did you have a relationship with him  
5 prior to coming to work for the Center?

6 A The relationship would be I knew of him.

7 Q Have you ever known Mr. Tolbert to  
8 campaign for any Republican candidates?

9 A Yes.

10 Q And who?

11 A I guess any Republican candidate in the  
12 Ninth District.

13 Q And Ninth District, for the record, is  
14 the Abingdon area?

15 A I believe so.

16 Q Where is the Ninth District?

17 A I have no idea.

18 Q Did Mr. Tolbert run for a constitutional  
19 office once?

20 A I don't know.

21 Q Are you aware that there are  
22 constitutional offices in the Abingdon area?

23 A Yes.

24 Q Do you know what they are?

25 A The Sheriff is one; right?

172

1 Q Yeah, the Sheriff would be one.

2 A I don't know what else would be  
3 constituted as a constitutional office.



4 Q After you were hired, did you move Adam  
5 Tolbert into a management role?  
6 A No.  
7 Q When he moved from IT to Human Resources,  
8 did he get an increase in pay?  
9 A He got -- yes.  
10 Q Debbie Hensley had served as an assistant  
11 HR person for over ten years; correct?  
12 A I don't know that.  
13 Q You don't know.  
14 Did you ask?  
15 A No.  
16 Q Did you want to know?  
17 A No.  
18 Q How long have you known Jeff Webb?  
19 A I first met Mr. Webb when he was a  
20 student at the community college.  
21 Q So I don't know what that means. Ten  
22 years? Twenty years?  
23 A More than twenty.  
24 Q Have you known him to help campaign for  
25 any Republican candidates?

173

1 A No.  
2 Q Does he have a college degree?  
3 A Yes.  
4 Q Do you know anything about an audit about  
5 three or four years ago that showed that there were  
6 reportable issues with Webb's IT department?  
7 A There was an audit four or five years  
8 ago. I don't remember a particular point about the IT.

9 I remember inventory in the finance department was a  
10 big issue.

11 Q In the sense it hadn't been done?

12 A No. I think it was more in the sense it  
13 could be better.

14 Q The inventory could be better?

15 A Again, I've not seen the report in a long  
16 time. I don't know.

17 Q During that same audit, do you know  
18 whether it also showed that there were issues with HR  
19 records that Joyce Brooks was in charge of?

20 A I do not know.

21 That audit, for the record, was auditing  
22 Rachel Fowlkes' and Duffy Carmack's interim.

23 Q Who is Sonia Vanhook?

24 A She is a employee of the Center.

25 Q And what does she do or what did she do?

174

1 A She's done about every job in the Center.

2 Q Was she permitted to work on her Ph.D.  
3 while working on State time?

4 A I'm not aware she ever worked on her  
5 Ph.D.

6 Q Did you approve funds to pay her tuition?

7 A Yes.

8 Q To work towards what?

9 A I believe she was working on a second  
10 master's.

11 Q After Carmack was fired, did you create a  
12 position for Sonia teaching class?

13 MR. KINCER: Objection to the form of the

14 question.

15 BY MR. GRIMES:

16 Q Go ahead and answer.

17 A Well, Mr. Carmack was not fired and  
18 Miss Sonia Vanhook has an evolving position that has  
19 changed since her first day on campus.

20 Q And did that evolving position include  
21 teaching classes to the College for Older Adults, a  
22 noncredit program?

23 A She was doing that upon my arrival.

24 Q Does she also work with elementary school  
25 children?

175

1 A She monitors our field trips.

2 Q Your wife is a teacher; is that correct?

3 A That's correct.

4 Q Your son was a teacher and now a  
5 principal; correct?

6 A That is correct.

7 Q Where does your daughter -- son teach?

8 A My son doesn't teach.

9 Q Strike that.  
10 where does your wife teach?

11 A Ray Valley Elementary School.

12 Q Where is that?

13 A Washington County.

14 Q Is your daughter a teacher?

15 A Yes.

16 Q At which school?

17 A Patrick Henry High School.

18 Q Teaching what grade?

Matlock dep tran

19 A High school.  
20 Q All right. What class?  
21 A Health, PE and science, I believe.  
22 (Southwest Virginia Higher Education  
23 Center First LEGO League Information  
marked as Matlock Exhibit Number 18)

24 BY MR. GRIMES:

25 Q Exhibit 18 is a document produced by the 176

1 defense in this case.

2 Do you see the Bates number at the bottom  
3 of the page SWV681?

4 Turn to the second page, please.

5 A Okay.

6 Q Looking at this chart, when Dr. Fowlkes  
7 was the director, there were donations made; correct?

8 A I believe so.

9 Q But when you became the director, those  
10 donations go away and they are just reimbursements to  
11 Smyth County School and Wallace Middle; correct?

12 A I don't know about the donations. That  
13 would be a Foundation question.

14 We have nongeneral funds that we use to  
15 support LEGO robotics.

16 Q When you promoted Sonia Vanhook, you gave  
17 her a raise; correct?

18 A I don't believe Miss Vanhook has had a  
19 raise that no one else has had. She had the  
20 across-the-board 3 percent.

21 Q Sonia is Dale Cook's sister; correct?

22 A That is correct.

23 Q And you consider Dale Cook to be one of

24 your mentors; correct?

25 A I do.

177

1 Miss Vanhook was the first hire of the  
2 Center.

3 Q At any time did you have Cook attend  
4 meetings with you at the Center?

5 A No.

6 Q He is an insurance salesman in Abingdon;  
7 correct?

8 A That's correct.

9 Q Do you know what needling is?

10 A what?

11 Q Needling?

12 A No.

13 Q Never heard of that?

14 A No.

15 Q Never used that term; correct?

16 A Just saying "needling someone"?

17 Q Have you ever used the term "needling"?

18 A Maybe.

19 Q Did you ever say anything to Duffy  
20 Carmack about needling?

21 A I don't have any memory of that.

22 Q You're not denying you may have said it;  
23 you just don't remember, correct?

24 A I think I would remember if I had said  
25 something to Mr. Carmack about needling. That doesn't

178

1 seem like a word I would use in my normal vocabulary,

Matlock dep tran  
2 my normal tone.

3 Q Do you deny that you said something to  
4 Mr. Carmack about needling?

5 A I have no memory, yes, so I would deny  
6 that.

7 Q When was the first time that you learned  
8 that Joyce Brooks was interested in retirement?

9 A When Mr. Carmack told me upon my  
10 arrival -- before I was even hired. Mr. Carmack came  
11 to visit me at the community college.

12 Q And said something about Joyce Brooks  
13 retiring?

14 A He said that she may be interested in  
15 retiring soon.

16 Q When was that visit in relation to your  
17 taking the job at the Center?

18 A It was before the board met, so he must  
19 have known something before I did. I would say  
20 September of '15.

21 Q When, in fact, did she retire?

22 A June 4th was the date of the WTA, and I  
23 believe her retirement took effect February 1st of  
24 2018.

25 Q So before the WTA went into effect, you 179

1 knew that Joyce Brooks was thinking of retirement;  
2 correct?

3 A I know that everyone that works in my  
4 building has thought of retirement.

5 Q But specifically I'm asking about Joyce  
6 Brooks.

7 Matlock dep tran  
8 You met with Duffy Carmack when you were  
9 at the college, and you learned that Joyce Brooks was  
10 interested in retirement; correct?  
11 A My conversation with Mr. Carmack centered  
12 around he told me he wanted to work five more years.  
13 He thought Joyce wanted to work three or four more  
14 years.  
15 Q Is that yes?  
16 A Well, yes.  
17 Q Who replaced Joyce Brooks?  
18 A No one replaced Joyce Brooks.  
19 Q Was it Hannah Hietala?  
20 A No.  
21 Q Hannah is Kathy's daughter?  
22 A That's correct.  
23 Q And Kathy is your assistant; correct?  
24 A That's correct.  
25 Q And before that, the Center reimbursed  
UVA wise for half of Hannah's salary; correct?

180

1 A That's correct.  
2 Q And after this, afterward, the Center  
3 paid her entire salary; correct?  
4 A That's correct.  
5 Q Her salary is about what?  
6 A 28,000.  
7 Q When you used the number \$700,000 before  
8 lunch, I asked you what the payroll was, was that  
9 \$700,000 a year or a month or what?  
10 A I believe -- no, it's not a month, no,  
11 not at all.

Matlock dep tran

12 Q Do you remember saying that earlier?

13 A Oh, yes. I think -- I think payroll is

14 somewhere in the 700 -- was in the 700 -- in the year

15 somewhere around, maybe it was \$1.7 million.

16 Q So earlier you said 700, but now you

17 think maybe 1.7 million?

18 A I'd have to check.

19 Q Going back to when Brooks first told you

20 that she was interested in retirement, how long after

21 this did you reach out to Donna Kauffman at UVA HR

22 about using the WTA?

23 A Miss Brooks never filed paperwork to

24 retire or never approached me or sent me an email

25 saying she was planning on retiring.

181

1 Q Well, I didn't say email.

2 But you learned that she was -- she might

3 retire even before you started work; correct?

4 A Yes, the same as Mr. Carmack.

5 Q Would you agree or disagree that

6 Mr. Carmack was the only person who lost his job that

7 was already not retiring in the near future?

8 A I would totally disagree with that.

9 Q Would you agree or disagree that between

10 Joyce Brooks, Janet Williams and Duffy Carmack was the

11 only one who was not aware that his job was going away

12 before it happened?

13 A Miss Williams did not know the date in

14 which she was going to lose her job. Miss Brooks did

15 not know the date in which the WTA process was going to

16 happen.



Matlock dep tran  
17 Q Did you give advance notice to Joyce  
18 Brooks that she would be losing her job to give her  
19 advance notice?

20 A Miss Brooks was still in HR and she  
21 worked closely with Donna Kauffman, so some of the  
22 paperwork Miss Brooks would see because of the nature  
23 of her job. But I never discussed the details of WTA  
24 with her or Miss Williams or Mr. Carmack. They were  
25 not included in the decision-making process.

182

1 Q But Miss Brooks by virtue of the fact she  
2 worked in HR saw the paperwork that talked about her  
3 job being eliminated; correct?

4 A Miss Brooks saw some paperwork that  
5 talked about WTA.

6 (5/22/17 email from Donna Kauffman to  
7 David Matlock, Adam Tolbert, Susan Harris  
8 RE: WTA contact marked as Matlock  
9 Exhibit Number 19)  
10 BY MR. GRIMES:

11 Q Exhibit 19, Mr. Matlock, is an email from  
12 Donna Kauffman -- incidentally, is her office in  
13 Charlottesville?

14 A Yes.

15 Q -- to you and Adam Tolbert, copied to  
16 Susan Harris, reference WTA contact.

17 A Um-hum.

18 Q And at the bottom of the paper, the  
19 writer states, "Susan is aware we are discussing  
20 Douglas Viers, Joyce Brooks and William Carmack. Susan  
21 is also aware that William," quote, "Duffy," closed  
quote, "is not aware that he is being impacted by the  
WTA yet."

22 Matlock dep tran  
23 who is Susan?

24 A It says that Susan is the interim  
25 benefits supervisor in Charlottesville for UVA.

25 Q So can you explain why Douglas Viers,

183

1 Joyce Brooks and Joyce -- and Joyce Brooks knew about  
2 the WTA and its impact but Duffy Carmack did not?

3 A Well, I can't assert that. That's not  
4 what that statement says.

5 (5/22/17, 5/31/17 and 6/1/17 emails  
6 between David Matlock, Susan Harris, Adam  
7 Tolbert, Donna Kaufmann re: WTA Contact  
8 marked as Matlock Exhibit Number 20)

9 BY MR. GRIMES:

10 Q Exhibit 20 is more emails. The top of  
11 the page, David Matlock to Susan Harris, copied to  
12 yourself, Adam Tolbert and Donna Kauffman.

13 And there you write -- and the date is  
14 June 1, 2017 -- "I believe I have everything ready but  
15 waiting to talk with Janet."

16 Who is Janet?

17 A Janet Williams.

18 Q "I also plan to share with my executive  
19 committee of the board before I pull the trigger on  
20 Duffy."

21 And pull the trigger on what?

22 A The execution of the WTA plan. I was  
23 going to make sure that the executive board fully  
24 understood what we were doing, that I had their  
25 endorsement and that they had no questions, and if they  
26 did, we'd get those questions answered.

27 Q With respect to any other employee at the

184

1 Center during the history of your employment, have you  
2 ever made a reference in writing to pulling the trigger  
3 on them other than Duffy Carmack?

4 A "Pulling the trigger" is a common word in  
5 my vocabulary.

6 Q My question is a little different.  
7 with respect to any employee other than  
8 Duffy Carmack, have you ever made a reference in  
9 writing to "pulling the trigger"?

10 A I believe I probably have.

11 Q Okay. And have you looked at the  
12 documents produced by the defendant in this case?

13 A No.

14 Q Have you seen any reference to "pulling  
15 the trigger" referring to any employee other than Duffy  
16 Carmack?

17 A I have not looked, so I don't -- I just  
18 know that's a common word in my vocabulary.

19 Q Do you have a memory of a document  
20 existing referencing "pulling the trigger" other than  
21 the one I have just shown you, Exhibit 20?

22 A I don't have a memory, but I would say it  
23 could possibly exist. That's a very common word in my  
24 vocabulary.

25

♀

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1

2 (12/1/17 and 1/12/18 email strings  
3 between Donna Kaufmann, David Matlock,  
4 Carol Summers RE: Final business  
justification for SWVHEC WTA sent to DPB  
marked as Matlock Exhibit Number 21)

5 BY MR. GRIMES:

6 Q Exhibit 21, more emails.

7 Bottom of the page, the email from you to  
8 Donna Kauffman, copied to yourself or sent to yourself.  
9 why are you sending emails to yourself?

10 A Sometimes I don't have -- it's a  
11 self-filing system. I do it quite frequently with  
12 everything.

13 Q All right. So Donna Kauffman writes to  
14 you below, December 1, 2017, "Hi, David. Please send  
15 Carol and I the final business justification sent to  
16 DPB. Thank you in advance," and you respond, "I will  
17 send it in a few. I don't think I changed everything,"  
18 three question marks.

19 MR. KINCER: Objection to the -- that's  
20 misreading. It's not "everything," it's "anything."

21 MR. GRIMES: Under the -- I apologize.

22 BY MR. GRIMES:

23 Q "I don't think I changed anything," three  
24 question marks. "DPB approved it as written, but DHRM  
25 is going to have me completely rewrite everything."

186

1 And that's what DHRM told you; correct?

2 A I don't think we rewrote everything, but  
3 that could be some exaggeration in there, maybe  
4 frustration.

5 Q So sometimes you exaggerate when you are  
6 frustrated; correct?

7 A No.

8 Q You don't, okay.

9 So is what you said there true, "DHRM is  
10 going to have me completely rewrite everything"? Is

11 that true or false?

12 A That's probably -- because I did not  
13 rewrite everything, so I'll say that's false.

14 Q "A long story, but they tell me asking  
15 for volunteers completely violates State policy"?

16 A Um-hum.

17 Q So you considered asking for volunteers  
18 to retire or leave their employment; correct?

19 A I did consider that.

20 Q "I am completely confused and ready to be  
21 committed," and you have three exclamation points  
22 there?

23 A Um-hum.

24 Q So were you confused that you had to jump  
25 through hoops with the State or what's going on?

187

1 A No. I was confused. UVA throughout the  
2 history kept changing their position. And it was very  
3 frustrating because in my history with the Virginia  
4 Community College System, it was always so cut and dry,  
5 and UVA --

6 Q What did the rewrite with DHRM consistent  
7 of?

8 A I don't -- I'd have to -- I don't know.

9 Q Was it to omit from the report that the  
10 employees except Carmack had been told about the  
11 layoff?

12 A It could have, but we didn't -- we could,  
13 we could have.

14 Q DHRM did not give the final approval  
15 until almost mid 2018; correct?

16 A They didn't give approval to the  
17 execution plan.

18 Q Until mid 2018; correct?

19 A The way DPB does it is their full  
20 approval doesn't come until after the execution of the  
21 WTA. DPB pre, DHRM post.

22 Q This was long after Carmack had already  
23 been let go; correct?

24 A That's correct.

25 Q Who is Debbie Heath?

188

1 A Debbie Heath was a employee in the  
2 conference services division.

3 Q Did she retire?

4 A Yes.

5 Q Do you know why she retired?

6 A She told me mixed things.

7 Q She made some complaints to you; correct?

8 A She complained against Mr. Joe Mitchell.

9 Q She did.

10 And her complaints were what?

11 A I don't remember. She complained a lot.

12 Q All right. You have no memory -- is it  
13 your testimony you have no memory of what her complaint  
14 was about?

15 A Probably most of them centered around  
16 Mr. Mitchell trying to hold her accountable with  
17 keeping security with doors locked.

18 Q You used the word "probably."

19 Are you certain that's what she said?

20 A I'm certain she used that at some point.

21 Q What did you do, if anything, to address  
22 her complaints?

23 A She never filed a formal complaint.

24 Q Debbie Heath, in fact, retired at some  
25 point; correct?

189

1 A That's correct.

2 Q And Ely Hietala filled her position;  
3 correct?

4 A Yes. He applied for the job.

5 Q So how many members of the Hietala family  
6 did you have working for you at the most?

7 A When I came to work at the Center, there  
8 were four members either hired by Mrs. -- by  
9 Dr. Fowlkes or Mr. Carmack. They all worked there upon  
10 my arrival.

11 Q Was there a time when you were  
12 considering eliminating Douglas Viers' position?

13 A Yes, I was also -- and there was others.

14 Q And he was made aware that his position  
15 might be eliminated; correct?

16 A No.

17 Q Are you certain?

18 A I'm certain.

19 Q And his position was not, in fact,  
20 eliminated; correct?

21 A His position was not eliminated.

22 Q Why are there emails about including him  
23 in the WTA action plan -- strike that.

24 Why are there emails about including him  
25 in the Work Force Transition Act plan but no emails

1 about not including him in the Work Force Transition  
2 Act plan?

3 A When I started, I took a very broad  
4 stroke and looked at a lot of different areas, and then  
5 I tried to determine if that position is eliminated,  
6 can that work be transferred to the point where we can  
7 be sustainable for the next two years and beyond.

8 Q Was there a time when you were  
9 considering eliminating Patricia Ball's position?

10 A Yes.

11 Q Who was she?

12 A She is the manager of the Virginia  
13 Tobacco Commission scholarship loan program for the  
14 Southwest region, for the whole region.

15 Q Why was her position not eliminated?

16 A Because I couldn't replace her. That  
17 meant that had I -- there was no, there was no way I  
18 could backfill that position.

19 Q Now, you've indicated that the Foundation  
20 paid approximately 25 percent of Mr. Carmack's salary;  
21 correct?

22 A Yes.

23 Q Thus, eliminating his job at most would  
24 have saved the Center only 75 percent of his salary;  
25 correct?

1 A Yes.

2 Q And would you agree that someone had to  
3 perform the financial functions that were performed by



4 Mr. Carmack?

5 A For?

6 Q For what -- for the Center.

7 A Miss Hensley was doing that.

8 Q You would agree that somebody has to do

9 Mr. Carmack's job?

10 A Somebody was doing that.

11 Q Um-hum.

12 (Southwest Virginia Higher Education  
13 Center Budget Reduction and Restructuring  
14 Proposal marked as Matlock Exhibit Number  
22)

15 BY MR. GRIMES:

16 Q Exhibit 22. This is called Southwest  
17 Virginia Higher Education Center Budget Reduction and  
18 Restructuring Proposal.

19 Did you prepare this document?

20 A Yes.

21 Q You list Duffy's salary here as 162,477  
22 estimated for 2017/'18 salary and benefits; correct?

23 A Yes.

24 Q Now, is that only the portion that's paid  
25 by the Center or does that include the money paid by

192

1 the Foundation?

2 A That's total.

3 Q So eliminating Mr. Carmack's position  
4 from the Center would not save the Center \$162,000,  
5 would it? Because 25 percent is paid by the  
6 Foundation.

7 A That would be a logical assumption.

8 Q So that number is inflated by 25 percent;

9 correct?

10 A Well, I would say no.

11 Q Did the Center pay rent to anyone?

12 A We rent a -- so, yes.

13 Q To whom?

14 A I have no idea.

15 Q How much?

16 A 3,000 a year.

17 Q For what?

18 A Storage.

19 (6/7/17 email strings between Donna  
20 Kauffman, David Matlock, Joyce Brooks re:  
Adam marked as Matlock Exhibit Number 23)

21 BY MR. GRIMES:

22 Q Exhibit 23 is the next document.

23 The bottom of the page is an email from

24 Joyce Brooks to Donna Kauffman dated June 7, 2017, and

25 she writes, "Hi Donna, when Adam takes on a lot of my 193

1 duties, would there be justification to give him more  
2 than the customary 10 percent increase?"

3 And then above that, Miss Kauffman  
4 writes, "Good afternoon Joyce, Please have David give  
5 me a call on this one."

6 That's you, David Matlock; correct?

7 A Yes.

8 Q "The next step would be to send in a  
9 revised job description with Adam's new job duties  
10 incorporated."

11 And so did, in fact, Adam Tolbert get a  
12 10 percent increase?

13 A Part of the OSIG investigation was that

Matlock dep tran  
14 Adam was not properly -- his EWP didn't properly align  
15 with his duties and that led to an increase because of  
16 the OSIG investigation.

17 Q At the top of the page is an email from  
18 Donna Kauffman to you dated June 7, 2017, concerning  
19 Adam. And she writes, "Good evening David, I would  
20 rather have this conversation with you directly.  
21 Please give me a call at your convenience if you want  
22 to discuss further."

23 Do you know why Donna Kauffman did not  
24 want to put her concerns in writing?

25 A Probably that was fishing by Joyce.

194

1 We -- I did not include Joyce, Miss Brooks, in any of  
2 the conversations regarding the EWP plan.

3 And so obviously I'm not included in this  
4 email, so she -- maybe she was just trying to get some  
5 information from Donna, so maybe that's why Donna  
6 wanted to talk to me directly.

7 Q The numbers on Exhibit 22 -- if you would  
8 get that before you. Looking particularly at paragraph  
9 1B, you see some names listed there which include Adam  
10 Tolbert.

11 Do you see what I'm talking about?

12 A Um-hum.

13 Q Did that number include the 10 percent  
14 raise which Adam Tolbert was about to get?

15 MR. HARDY: Objection. Assumes facts not  
16 in evidence.

17 BY MR. GRIMES:

18 Q Answer, please.

19 Matlock dep tran  
MR. KINCER: You can answer the question.  
20 THE WITNESS: Okay.  
21 I don't know when Adam got a raise. When  
22 working on the WTA with UVA and DHRM, knowing that we  
23 were going to distribute duties across the board to  
24 people, the maximum the State will allow is 10 percent  
25 for responsibility added.

195

1  
2 (October 2017 email strings between Adam  
3 Tolbert, Donna Kauffman, Joyce Brooks RE:  
4 Austin Dierks Internal Salary Alignment  
5 marked as Matlock Exhibit Number 24)  
6 BY MR. GRIMES:  
7 Q Exhibit 24 I have stamped 740, written  
8 740 in the lower right-hand corner.  
9 This concerns, at the top of the page,  
10 Austin Dierks internal salary alignment; correct?  
11 A Um-hum.  
12 Q And what was his job?  
13 A He was an IT technician -- he is an IT  
14 technician.  
15 Q Look on the second page. The writer  
16 Donna Kauffman sends an email to Joyce Brooks, copied  
17 to Adam Tolbert, and says, "Based on the justification  
18 sent forward with the salary increase for Austin, I  
19 would have expected to see this 15 percent increase  
20 (Austin's name) in the budget reduction and  
21 restructuring -- budget reduction and restructuring  
22 proposal that David sent to me for the WTA (attached).  
23 Please advise."  
24 And why wasn't that number in the

24 proposal?

25 A well, first of all, what Austin was doing 196

1 was with the testing center, and that change in his  
2 duties took place well before the WTA.

3 Q Did you tell the board that you were  
4 going to give Austin Dierks a 15 percent pay raise?

5 A No.

6 Q Did you want them to know?

7 A In the history of the Center, I don't  
8 believe anyone was ever told.

9 (December 2017 email string between David  
10 Matlock, Adam Tolbert, Debbie Rigdon, RE:  
11 Requested Information marked as Matlock  
Exhibit Number 25)

12 BY MR. GRIMES:

13 Q Exhibit 25. Now, the savings associated  
14 with a reduction in force are not realized for a number  
15 of months or years; correct?

16 A That's correct.

17 Q If you look at your email here from David  
18 Matlock, yourself, to Adam Tolbert dated December 20,  
19 2017 and the one right below it from Debbie Rigdon to  
20 you dated December 18, 2017, she writes in the last  
21 sentence of the first paragraph, "Generally speaking,  
22 it can take as much as two years to recover the costs  
23 associated with layoff actions."

24 And that's true, isn't it?

25 A Um-hum. That's why you can't fill a 197

1 position.

2 Q Layoffs took place when?

Matlock dep tran

3 A January 4th.  
4 Q Of?  
5 A 2018.  
6 Q And so this is January of 2019; right?  
7 A That's correct.  
8 Q So the cost savings have not yet been  
9 recovered; correct?  
10 A Oh, I think they have.  
11 Q You do, okay.  
12 (November 2016 - January 2017 email  
13 strings between Donna Kauffman, David  
14 Matlock, Susan Harris RE: Time  
15 sensitive, Southwest Higher Ed Center  
SWVHEC (retirement/layoff) meeting today  
at 1:30 pm marked as Matlock Exhibit  
Number 26)  
16 BY MR. GRIMES:  
17 Q Incidentally, have you ever worked as an  
18 accountant?  
19 A No.  
20 Q And you don't have a degree in  
21 accounting; correct?  
22 A No.  
23 Q Exhibit 26 is an email from Donna  
24 Kauffman to you dated January 26, 2017; correct?  
25 A That's correct.

198

1 Q Below that is an email from Susan Harris  
2 to Donna Kauffman dated January 26, 2017.  
3 And you see certain cost estimates listed  
4 there for four people: Patricia Ball, Douglas Viers,  
5 Joyce Brooks and William Carmack; correct?  
6 A That's correct.  
7 Q Did the Center incur the costs listed

Page 166

Matlock dep tran

8 here for purchased years of service?

9 A No.

10 Q None of these costs were incurred;  
11 correct?

12 A For years of service for those who took  
13 retirement, no, that was completely covered.

14 Q Was the board told that the Center would  
15 not incur any of these costs?

16 A Yes, the executive board.

17 Q But not the whole board?

18 A No.

19 Q If so, what was the actual savings or  
20 loss to the Center for using the WTA?

21 A The actual savings?

22 Q Yes, sir.

23 A After when allowed to hire the marketing  
24 position, in excess of \$104,000 a year.

25 Q And that's it, 104 a year?

199

1 A In excess of \$104,000 a year.

2 Q Would you agree that there was a cost to  
3 the Center for the amount of time you and staff spent  
4 working on how to eliminate these jobs?

5 A There was a cost related to the  
6 processing and preparation of the WTA plan.

7 Q And what was that cost?

8 A I don't have a number.

9 Q Did you ever -- sorry.

10 (10/31/17 email from David Matlock to  
11 Joyce Brooks, Adam Tolbert, Kathy  
12 Hietala, Jeff Webb RE: Thank you marked  
as Matlock Exhibit Number 27)

13 BY MR. GRIMES:

14 Q Did you ever attempt to quantify that  
15 cost?

16 A No.

17 Q Did you want to know what it was?

18 A No.

19 Q To this day do you want to know what it  
20 was?

21 A No.

22 Q Exhibit 27 is an email from you to Joyce  
23 Brooks, Adam Tolbert, Kathy Hietala, and Jeff Webb.

24 There you write, "Thank you for your time  
25 this morning. I hate that we are having to spend so

200

1 much time on something that should be rather simple."

2 And the reality is the WTA process took a  
3 lot more time than you anticipated; correct? And  
4 that's why --

5 A No.

6 Q -- you say this.

7 No?

8 A I don't reference WTA in this.

9 Q And you say, "I've made Senator Carrico  
10 of each step we are taking -- taking."

11 Let me read this again. I'm going to  
12 read it the way it's written. "I have made  
13 Senator Carrico of each step we are talking my and the  
14 feedback from UVA. I appreciate you. David."

15 And you wrote this at 11:47 in the  
16 morning; correct?

17 A Yes, sir.



18 Q And the word "aware" is missing, isn't  
19 it?

20 A Yes, I would assume that would be what I  
21 meant there. My intent was "aware."

22 Q And it's true, you kept Senator Carrico  
23 aware of each step you were taking; correct?

24 A I made Senator Carrico aware of every  
25 step in every decision I've made. He's the chairman of  
201

1 my board, and I report directly to my board.

2 Q Do you know of any Higher Ed. Center in  
3 Virginia that does not have a CFO?

4 A I think so, yeah.

5 Q Well, which ones?

6 A I think the New College Institute has a  
7 business manager and I think Roanoke has a business  
8 manager. I'm not -- I think Southern has a CFO.

9 Q Do you know of any other Higher Ed.  
10 Center in Virginia that has used the Work Force  
11 Transition Act to eliminate a CFO's job?

12 A No.

13 Q In the history of the Commonwealth of  
14 Virginia with respect to any agency in the State, are  
15 you aware of any other agency that has used the Work  
16 Force Transition Act to eliminate a CFO's job?

17 A No.

18 Q Why was Adam Tolbert involved in planning  
19 the use of the WTA to eliminate Duffy Carmack's job?

20 A Adam Tolbert was used in the entire WTA  
21 process because he was backfill for Miss Brooks. I  
22 could not allow Miss Brooks to be in the weeds.

23 UVA advised that I find someone other  
24 than Miss Brooks to help navigate the process.

25 Q Deborah Rigdon from DHRM was also

202

1 involved; correct?

2 A Yes.

3 Q Do you know whether she knew of  
4 Mr. Carmack's complaint to DHRM about your alleged  
5 financial improprieties?

6 A She never made a statement directly to me  
7 about that that I'm aware of.

8 Q Irrespective of whether she made a  
9 statement directly to you, do you know whether she knew  
10 of Mr. Carmack's complaints to DHRM?

11 A I'm aware that she knew there was a  
12 complaint, but no one ever told me who made the  
13 complaint.

14 Q Why was Duffy Carmack not offered the  
15 position that was unfrozen for Hietala?

16 A There was no position unfrozen for  
17 Hietala.

18 Q Did it bother you that Duffy Carmack took  
19 severance rather than enhanced retirement?

20 A No. He -- it was his choice.

21 Q With respect to Janet Williams, when was  
22 the first time you learned that she was interested in  
23 retirement?

24 A Sometime in the summer of -- I will say  
25 September, I think, September of '17.

203

Matlock dep tran

1 Q And didn't she submit retirement  
2 paperwork to you or Joyce Brooks in August of 2017?  
3 A No.  
4 Q Did she get a response to the request  
5 right away?  
6 A She didn't submit paperwork, sir.  
7 Q When did she, in fact, retire?  
8 A The WTA was January 4 of 2018. I think  
9 her retirement became effective February 1 of 2018.  
10 Q Did you tell her on January 4, 2018 that  
11 she could retire?  
12 A I told her on January 4, 2018 that  
13 according to the WTA process, she had two options, and  
14 here's what they were.  
15 Q When was the first time that Joyce Brooks  
16 told you anything about Janet Williams wanting to  
17 retire?  
18 A I think it was in September of 2017.  
19 (5/22/17 email string between David  
20 Matlock, Donna Kauffman, Adam Tolbert re:  
21 Duffy's Notice + WTA Waiver marked as  
22 Matlock Exhibit Number 28)  
23 BY MR. GRIMES:  
24 Q Exhibit 28, Bates 10835, email from David  
25 Matlock to Donna Kauffman, copied to yourself and Adam  
Tolbert, I may have said this, but dated May 22, 2017;

204

1 correct?  
2 A (No response).  
3 Q Correct, sir?  
4 A Yes.  
5 Q There you write, "Donna, thank you for

6                                   Matlock dep tran  
 6    completing this research for us."  
 7                                   So Donna had done some research for you;  
 8    correct?  
 9                   A       Yes, she -- she was involved early in the  
 10   process.  
 11                  Q        "I should have a letter ready for you  
 12   shortly, but was given a curve ball on Friday."  
 13                                That's what you wrote; correct?  
 14                  A        Um-hum.  
 15                  Q        And the curve ball was that Joyce reports  
 16   that now Janet Williams might be interested?  
 17                  A        Um-hum.  
 18                  Q        You're talking about retirement; correct?  
 19                  A        Um-hum.  
 20                                THE COURT REPORTER: I'm sorry?  
 21                                THE WITNESS: Yes. Yes.  
 22   BY MR. GRIMES:  
 23                  Q        So it was not September of 2017, was it?  
 24                  A        It was May.  
 25                  Q        It was May.

205

1                               And in reality, you had heard even  
 2   earlier than that that Janet was thinking about  
 3   retiring; correct?  
 4                  A        Janet spoke as all employees do about the  
 5   day they are going to retire and the wishing of  
 6   retirement.  
 7                                (1/25-26/2017 email string between David  
 8                                Matlock, Donna Kauffman, Joyce Brooks RE:  
 9                                Add on for incentive marked as Matlock  
 9                                Exhibit Number 29)  
 10   BY MR. GRIMES:

Matlock dep tran  
11 Q Exhibit 29. The email at the bottom of  
12 the page is from Joyce Brooks to Donna Kauffman dated  
13 January 25, 2017, which you would agree is before  
14 September of 2017 and before May of 2017; would you  
15 not?

16 A That's true.

17 Q And there she writes, "Hi, could you add  
18 Janet Williams to that list for possible early  
19 retirement?"

20 Did I read that correctly?

21 A That's what it says, yes, sir.

22 Q So you knew as early as January of 2017  
23 that there was a chance that Janet Williams might  
24 retire; did you not?

25 A Adding her to the list does not mean that  
206

1 she was interested in retiring.

2 Q Oh, it doesn't?

3 A No, no more than on Exhibit 26, the other  
4 ones listed.

5 Q You do acknowledge receiving this email  
6 in January of 2017 --

7 A Yes.

8 Q -- do you not?

9 A Yes.

10 Q How long after Williams had her job  
11 eliminated did she retire?

12 A Mrs. Williams' job was not eliminated;  
13 she was laid off.

14 Q How long after Williams had her job laid  
15 off, use whatever word you want to use, did she retire?

Matlock dep tran  
16 A The WTA took place on January 4th, 2018,  
17 and I believe her retirement was effective  
18 February 1st. It could have been March 1st. I'm not  
19 certain. But there was choices. There was paperwork  
20 for them to sign and turn back in.

21 Q Of what year?

22 A Of 2018.

23 Q Who replaced her?

24 A No one.

25 we didn't replace -- all three positions 207

1 have not been replaced.

2 Q Williams was approached before she was  
3 laid off about whether she was willing to retire,  
4 wasn't she?

5 A She was made aware the WTA process would  
6 be a potential option.

7 Q Wasn't a retirement party held in 2018  
8 for both Joyce Brooks and Janet Williams?

9 A Yes.

10 Q What month?

11 A August maybe.

12 Q Of?

13 A 2018.

14 Q And who planned that?

15 A Kathy Hietala that works in my office.

16 Q Your assistant?

17 A Yes.

18 Q Did you attend?

19 A Yes.

20 Q When Brooks and Williams retired, did you

Matlock dep tran  
21 move Adam Tolbert into Human Resources?

22 A Yes. On the day of the activation of the  
23 WTA, the plan -- the work had to be distributed.

24 Q And you've testified earlier he had no  
25 background in HR, did he?

208

1 A Well, yes, he did. He was Miss Brooks'  
2 assistant.

3 Q Is Adam Tolbert the chairman of the Ninth  
4 District Republican Party?

5 A Yes, he is.

6 Q Did moving Adam Tolbert into HR give him  
7 access to salaries, performance reviews, personal  
8 identifying information for employees?

9 A Yes.

10 Q Did this violate agency privacy policy?

11 A No. He, as an HR person -- at one point  
12 Mr. Carmack had that same access and Mrs. Hensley upon  
13 my arrival. We were -- we needed to be in -- make sure  
14 we were totally compliant.

15 Q Would you agree the Center and State  
16 could have saved by just permitting these women to  
17 retire in the normal course?

18 A If they would retire in the normal  
19 course.

20 (2/3/17 email from Donna Kauffman to  
21 Susan Carol Harris and David Matlock RE:  
22 WTA calculations for SW marked as Matlock  
Exhibit Number 30)

23 BY MR. GRIMES:

24 Q Because implementation of the WTA  
25 resulted in more retirement money for them; correct?

209

1 A Yes, and a cash settlement for  
2 Mr. Carmack.

3 Q And even if VRS -- strike that.  
4 Even if VRS covered that extra  
5 retirement, that was still additional expense to the  
6 State; correct?

7 A It was additional expense to the Center,  
8 yes, which is the State -- it was to the State, not the  
9 Center.

10 Q what is -- strike that.  
11 what is the notation of "cost to  
12 department of severance" in this document referencing?

13 A I'm not an HR expert. I'm not quite  
14 sure.

15 Q Did Joyce Brooks or Janet Williams get a  
16 severance package in addition to the benefits of the  
17 enhanced retirement?

18 A No.

19 Q And in February 2017, Patricia Ball and  
20 Douglas Viers are still on the list; correct?

21 A Yes.

22 Q When did they come off?

23 A At some point in the planning process in  
24 the spring, early summer, somewhere in there.

25 Q When do you say today that you first

210

1 learned that Duffy Carmack had made an OSIG complaint?

2 A January 4th, 2018.

3 Q When did you first suspect that Duffy  
4 Carmack had made an OSIG complaint?



Matlock dep tran

5           A     I had suspicions the day that the  
6     inspector called me.

7           Q     And that was when, sir?

8           A     The middle of October of '17, middle to  
9     late October, somewhere in that neighborhood, of '17.

10          Q     Had you already began -- begun taking  
11     away some of Mr. Carmack's duties?

12          A     No.

13          Q     Tim Sadler called you on October 16, 2017  
14     from the Inspector General's office; correct?

15          A     That's correct, if that's what it says.  
16     I know it was in the middle of September -- middle of  
17     October of '17.

18          Q     And that was before or after the  
19     reception/event/dinner, whatever it was, in Bristol  
20     where you overheard a conversation that Duffy Carmack  
21     would have your job within a year?

22          A     Yeah, that was afterwards.

23          Q     After you overheard the comment at the  
24     reception/event/dinner, did you speak with anybody  
25     about that comment?

211

1           A     No.

2           Q     Nobody?

3           A     No. People -- people talk about stuff  
4     like that. No.

5                     (7/26-27/17 emails between COV Hotline  
6                     and Duffy Carmack RE: Southwest Virginia  
7                     Higher Education Center - Complaint  
                      marked as Matlock Exhibit Number 31)

8     BY MR. GRIMES:

9           Q     When in --

Page 177

Matlock dep tran

10 MR. KINCER: Did we get -- oh, that's the  
11 old one.

12 MR. GRIMES: Sorry. Yes, sir.

13 BY MR. GRIMES:

14 Q When in your working career have you ever  
15 overheard another conversation about somebody saying in  
16 effect, "One day I'll have your job"?

17 A Quite often. I mean --

18 Q Quite often?

19 A I mean, in education, a counselor wants  
20 to be a dean, a dean wants to be a VP, a VP wants to be  
21 a P, you know.

22 Q People are always looking for  
23 opportunity; correct?

24 A People are always looking for ways to  
25 take another step up the rung.

212

1 MR. GRIMES: What's the number of this  
2 one?

3 THE COURT REPORTER: The one we just  
4 marked is 31.

5 MR. GRIMES: All right.

6 BY MR. GRIMES:

7 Q Exhibit 31 is an email exchange between  
8 you and Duffy Carmack. The print is small.

9 MR. HARDY: I'm sorry, counselor. Did  
10 you say this is between David Matlock and Duffy  
11 Carmack?

12 MR. GRIMES: I may have, and if I did,  
13 I'm mistaken.

14 BY MR. GRIMES:

Matlock dep tran

15 Q It's an email exchange; correct --

16 A Yes.

17 Q -- Mr. Matlock?

18 A Yes.

19 Q And you see at the top of the page it's  
20 dated July 27, 2017 and references a COV hotline.

21 what does COV stand for, do you know?

22 A Commonwealth of Virginia would be my  
23 guess.

24 Q The second line, second email is from  
25 Duffy Carmack to the hotline, July 27, 2017. In there

213

1 the writer states, "Shaun, good morning. I am  
2 comfortable in sending the information to SCHEV --"  
3 that's the Higher Ed. Center; correct?

4 A (No response).

5 Q Mr. Matlock?

6 A Yes.

7 Q "-- as presented. In reality, it will be  
8 known that the complaint was lodged by me for the  
9 benefit of the Center and all employees."

10 MR. KINCER: "It will be know." There's  
11 a typ- -- there's a grammar error there who you pointed  
12 out on one of Mr. --

13 MR. GRIMES: All right.

14 BY MR. GRIMES:

15 Q So that's what Mr. Carmack wrote;  
16 correct?

17 A He writes, "It will be know"...

18 Q You will agree at least from  
19 Mr. Carmack's perspective he thought that you would

Page 179

20 know who was complaining; correct?

21 A No.

22 Q No?

23 A No.

24 Q Were you ever interviewed by OSIG  
25 concerning Carmack's complaint?

214

1 A I was interviewed by OSIG concerning a  
2 hotline complaint.

3 Q When?

4 A The date in which Tim Sadler reports that  
5 he called me.

6 Q And what did you tell the investigator?

7 A That I would comply and give him  
8 everything he needed, but I want -- but when he said he  
9 was calling for a hotline complaint, as I stated  
10 earlier this morning, I stopped him in mid sentence and  
11 said, "I have been working on a WTA for a year. Do I  
12 need to stop?"

13 Q Did the investigator ask you about paying  
14 for your son's school to go to the robotics  
15 competition?

16 A Yes.

17 Q And what did you tell him?

18 A I shared all the exhibits and all the  
19 documentation, and it was found to be unsubstantiated.

20 Q Were you asked about the husband and wife  
21 computer team who was -- who were working from their  
22 home, Barry and Elizabeth Tate?

23 A Yes.

24 Q What was Barry Tate's job title?

25 A He is a programmer.

215

1 Q what's Elizabeth Tate's job title?

2 A She's like an IT specialist, programmer,  
3 analyst.

4 Q what were they supposed to be doing for  
5 the Center?

6 A They weren't doing anything for the  
7 Center. They wrote the code for the Virginia Tobacco  
8 Commission for their scholarship loan program for the  
9 entire Commonwealth of Virginia administering roughly  
10 7 million a year.

11 Q Did they work from home predominantly?

12 A They worked from home since the first  
13 time they were hired prior to my arrival at least ten  
14 years before I got there.

15 Q Do you know who hired them?

16 A I assume Dr. Fowlkes.

17 Q Do you know whether the husband was a  
18 contract agency vendor?

19 A Yes. He was not a employee. He was a  
20 contractor.

21 Q And the wife was a full-time agency  
22 employee with benefits; correct?

23 A Not full time. I think -- no, not full  
24 time.

25 Q Was the couple paid through a Tobacco

216

1 Commission grant?

2 A Yes.

Matlock dep tran

3 Q what is the role of the Tobacco  
4 Commission with respect to the Center and the  
5 Foundation?

6 A Depending -- fiscal agent. We are the  
7 fiscal agent for their scholarship and loan program.

8 Q Is the couple still employed by the  
9 Center or the Foundation?

10 A Yes.

11 Q Are they paid about a hundred thousand  
12 dollars a year for their services?

13 A I don't think it's that much.

14 Q You don't?

15 A No.

16 Q Are the couple close friends with Jeff  
17 Webb?

18 A I don't know.

19 Q Jeff Webb works at the agency, correct?

20 A Yes. He's their supervisor.

21 Q Did he approve the couple's overtime?

22 A If they were paid overtime, he approved  
23 it.

24 Q Do you know whether Jeff Webb approved  
25 111 hours of overtime pay for the wife between July and  
217

1 October 2016?

2 A I don't know that to be a fact. I assume  
3 it's true if you've got that kind of information.

4 Q Wasn't Duffy Carmack their supervisor?

5 A Duffy Carmack was never their supervisor.

6 Q Did Duffy Carmack ever speak with you  
7 about this issue?

8                   Matlock dep tran  
9           A       What issue?  
10          Q       The issue we're talking about, the fact  
11           A       No, because they work from home and  
12           receive overtime pay when he was interim.  
13          Q       Do you know whether Duffy Carmack ever  
14           spoke with Jeff Webb about the issue involving the  
15           couple?  
16          A       About overtime?  
17          Q       About all the things we're asking about:  
18           The fact they worked from the home, the fact one is an  
19           employee, one is a vendor, all those --  
20          A       That was common knowledge.  
21          Q       Have any practices with respect to this  
22           couple's work been changed?  
23          A       No -- well, upon my arrival, I mandated  
24           that Elizabeth start coming to the Center once a week  
25           or do a phone conference once a week.

218

1           Q       Right.  
2           A       Yeah.  
3           Q       So that's one thing that's changed, isn't  
4           it?  
5           A       Um-hum.  
6           Q       Still working overtime?  
7           A       No, her overtime was stopped. We stopped  
8           her overtime after we did some investigation. We  
9           determined that she technically isn't allowed that.  
10          Q       Right.  
11          A       And so we have capped her at, it may be  
12           20 hours a week now. I'm not certain. But she's been

Matlock dep tran  
13 capped and she is not allowed to work overtime anymore.

14 Q Did you ever tell Duffy Carmack to back  
15 off or the couple might quit?

16 A No.

17 Q Were you asked about the timely  
18 submission of invoices?

19 A By?

20 Q By the OSIG.

21 A Yes.

22 Q Are invoices due each month?

23 A Invoices are due within 30 days of  
24 receipt.

25 Q When Carmack was employed, did you submit  
219

1 invoices always by the 15th of each month?

2 A No, there's no policy that says the 15th  
3 of each month.

4 Q Who all worked in the finance department  
5 at the time Carmack was employed?

6 A I believe he supervised Miss Hensley.

7 Q Anybody else?

8 A He supervised Alicia Young, he supervised  
9 Melissa -- the name slips me right now. Melissa. He  
10 supervised the testing center, which had maybe three  
11 part-time hourly wage employees, and he supervised  
12 Sonia vanhook.

13 Q Would you agree or disagree that you  
14 excluded the finance department from financial  
15 decisions?

16 A I would disagree.

17 (November 2016 email string between  
Shirley Carlson, Duffy Carmack, Kathy



18 Matlock dep tran  
Hietala, Deborah Hensley, Sonia Vanhook  
19 RE: Mt. Rogers Adult Education marked as  
Matlock Exhibit Number 32)

20 BY MR. GRIMES:

21 Q Exhibit 32 is another series of emails.

22 Did you include the finance department in  
23 the decision to commit additional classrooms to your  
24 friends at Mt. Rogers?

25 A I included Mr. Carmack in all decisions 220

1 related to room utilization.

2 And as far as friends go, they are  
3 vendors.

4 Q Were they also friends?

5 A I really didn't know them before they  
6 came to the Center.

7 Q Did they become friends?

8 A Professional acquaintance. I don't dine  
9 with them.

10 Q Do you call them friends or not? In your  
11 mind.

12 A I would call them a friend.

13 Q That's what I was trying to ask.

14 A We work in the same building.

15 Q Did you ever purchase nonbudgeted items  
16 without the finance department's knowledge?

17 A No.

18 Q Did you ever approve for someone else to  
19 purchase nonbudgeted items without the finance  
20 department's knowledge?

21 A No.

22 Q Were you aware that someone purchased

Matlock dep tran  
23 nonbudgeted items without the finance department's  
24 knowledge?

25 A No.

221

1 Q What's a Senior Expo?

2 A Senior Expo is an event for people over  
3 the age of 50. It coincides with our College of Older  
4 Adults. It's a health fair.

5 Q Did you exclude Duffy Carmack from  
6 planning meetings related to Senior Expo?

7 A No.

8 Q Have you ever held a community golf  
9 tournament under the name of the Foundation?

10 A Yes.

11 Q How many times?

12 A Once.

13 Q Were there planning meetings held before  
14 the tournament?

15 A Yes.

16 Q Was the finance department included in  
17 those meetings?

18 A They were invited. Mr. Carmack was  
19 invited.

20 Q But they didn't participate; correct?

21 A He chose not to.

22 Q Who chose not to?

23 A Mr. Carmack.

24 Q Did he tell you that?

25 A Yes.

222

1 Q Did you advertise for the tournament?

2 A Yes.  
3 Q How did you advertise?  
4 A Flyer.  
5 Q About how many attendees were there?  
6 A 32.  
7 Q Was there a cost for entry?  
8 A Yes.  
9 Q What was the cost?  
10 A I believe it was \$400 a team or a hundred  
11 dollars an individual.  
12 Q How much money was collected?  
13 A I would say in excess of \$5,000.  
14 Q What was the net gain to the Foundation  
15 from the tournament?  
16 A It was terrible. It was about \$600.  
17 Q Where did the money go?  
18 A The Foundation has it.  
19 Q Were there any invoices submitted for the  
20 expenses of the event?  
21 A Yes.  
22 Q To whom?  
23 A To the Foundation.  
24 Q Did Mr. Carmack ever ask you where the  
25 money went from the tournament?

223

1 A It was -- no.  
2 Q Did he ever ask you where the invoices  
3 were for the expenses for the tournament?  
4 A No.  
5 Q Did you keep all your emails about the  
6 golf tournament?

Matlock dep tran

7 A I believe I did. I don't delete  
8 anything.

9 Q Do you have them still?

10 A If they exist.

11 Q You gave Alicia Young some cash at some  
12 point; correct?

13 A Yes.

14 Q About \$500?

15 A I would say that's a fair guess, 5, \$600.

16 Q Was that all the money that was realized  
17 from the golf tournament?

18 A That was some cash that was collected the  
19 morning of.

20 Q Did she ask you orally for information  
21 concerning who -- concerning who paid, what they paid,  
22 why they paid, et cetera?

23 A She asked questions to make sure that  
24 people who made donations received their tax credit.

25 Q Were all the donations in cash?

224

1 A Oh, no.

2 Q Checks?

3 A Yes, the majority was all checks.

4 Q The expenditures for cost, was that done  
5 by cash or check?

6 A It was done by a personal check.

7 Q Personal check?

8 A Yes.

9 Q Who wrote the personal check?

10 A I did the personal check.

11 Q And do you still have those checks?

Page 188

Matlock dep tran

12 A I'm sure my bank keeps them.

13 I got reimbursed by the Foundation out of  
14 the proceeds.

15 (June 26, 2017 email string between  
16 Alicia Young, David Matlock, Duffy  
17 Carmack RE: End of year marked as  
Matlock Exhibit Number 33)

18 BY MR. GRIMES:

19 Q So did you submit a request for  
20 reimbursement to the Foundation from the proceeds?

21 A Yes.

22 Q Is that consistent with the accounting  
23 practices of the Center?

24 A It wasn't a Center event; it was a  
25 Foundation event.

225

1 Q Same question. Is that consistent with  
2 the accounting practices of the Foundation?

3 A I believe it was consistent.

4 Q Exhibit 32 [sic] is some emails between  
5 you and Alicia Young and some were copied to Duffy  
6 Carmack.

7 So look at the bottom of the page. You  
8 will see an email from Alicia Young to you, June 26,  
9 2017. She writes, "David, I need to send up the funds  
10 from the golf tournament by Tuesday, June 27th for year  
11 end. I will also need the expenses for the golf  
12 tournament by Tuesday to record them in FY17 when the  
13 tournament was held," and that's what she asked;  
14 correct?

15 A Um-hum.

16 MR. KINCER: Yes?

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17 THE WITNESS: Yes. Sorry. Yes.

18 BY MR. GRIMES:

19 Q And does the fiscal year of the Center  
20 end on June 30 of each year?

21 A Yes.

22 Q And you responded on June 26, 2017, "How  
23 about we meet around two o'clock today to finish that  
24 up"; correct?

25 A Yes.

226

1 Q The golf tournament occurred when?

2 A June '17.

3 Q It was June 17?

4 A June in 2017. I don't recall the date.

5 Q And who held the cash between the time it  
6 was received and the time it went to Alicia Young?

7 A When the tournament started, I had an  
8 employee of UVA Wise with me. I put it in a box.

9 Q A box?

10 A Like a money lockbox and locked it in my  
11 truck.

12 Q Have you ever received any training in  
13 how to handle agency money?

14 A Yes.

15 Q Is the practice you've just described  
16 consistent with your training?

17 A The practice I just explained was  
18 nonagency money; it was Foundation money.

19 (5/31/17 email from Alicia Young to David  
20 Matlock and Duffy Carmack re: Golf  
21 Tournament marked as Matlock Exhibit  
Number 34)

22 BY MR. GRIMES:

23 Q And why did you run the golf tournament  
24 through the Foundation and not the agency?

25 A So that the vendors, the people who were 227

1 writing checks, could get their tax information. The  
2 Foundation is a 501(c)(3).

3 MR. GRIMES: Did you say 33?

4 THE COURT REPORTER: 34.

5 BY MR. GRIMES:

6 Q Exhibit 34, an email from Alicia Young to  
7 you, copied to Duffy Carmack, May 31, 2017. "David, I  
8 have an invoice from Glenrochie Country Club to pay for  
9 the golf tournament."

10 I take it that's where the tournament was  
11 held; correct?

12 A That's correct.

13 Q "Could you tell me who to contact there  
14 to get a W-9 so I can process payment to them?"

15 Did I read that correctly?

16 A That is correct.

17 Q Did you respond to this email?

18 A I'm sure I did.

19 Q Where is the response?

20 A I probably walked up. Her office is a  
21 few feet from me.

22 Q When you were employed at the college,  
23 you hosted a Richard Leigh Songwriters Festival in the  
24 name of the college; correct?

25 A The -- the Foundation of VHCC hosted a 228

1 fundraiser in the name of the VHCC.

2 Q Was it physically held at the Center's  
3 building?

4 A A portion of it, yes.

5 Q Then when you came to the Center, did you  
6 have a disagreement with the college president about  
7 something?

8 A About something?

9 Q Yeah. Did you have a disagreement with  
10 the college president about the fact you felt like the  
11 fundraiser should follow you when you left the college  
12 and be in the name of the Center or the Foundation and  
13 not the college?

14 A There was no disagreement about that.

15 Q Did you want the fundraiser to be held in  
16 the name of the Center or the Foundation and not the  
17 college?

18 A Not the college's foundation, no, sir.

19 Q The fundraiser that year was still put on  
20 by the college; correct?

21 A By the college's foundation.

22 Q Have you heard that there's some money  
23 missing from that fundraiser?

24 A No, sir. I didn't work there.

25 Q You also -- well, sometimes you hear

229

1 things when you don't work places.

2 You also attempted to put on your own  
3 Richard Leigh fundraiser six months later; correct?

4 A Incorrect.



Matlock dep tran  
5 Q Did you attempt to put on a Richard Leigh  
6 event about six months later?

7 A Not about six months later, no, sir.

8 Q Well, I feel like we're playing some game  
9 with words.

10 When did it occur?

11 A We worked with the town of Abingdon, with  
12 the tourism department.

13 Q Who is "we"?

14 A The Center.

15 Q The Center worked with the town of  
16 Abingdon tourism department and did what?

17 A Held an event for the Abingdon tourism  
18 department.

19 Q That featured Richard Leigh in some way?

20 A Yes.

21 Q And it was when in relation to the  
22 fundraiser put on by the college?

23 A The fundraiser put on by the college is  
24 every Memorial Day.

25 Q Um-hum.

230

1 A And our event with the town of Abingdon,  
2 we've had two, very profitable, July of 6 -- July of  
3 '17 and November '18.

4 Q And how much money was raised by that  
5 event?

6 A Directly, probably just \$2,000.

7 Q Directly, indirectly?

8 A Indirectly, another 5 or \$6,000.

9 Q And who held the money that time?

Matlock dep tran  
10 A Everything went through the VH- -- the  
11 Center's web account.  
12 Q Did the Center ever receive any money  
13 from that event?  
14 A Yes.  
15 Q How much?  
16 A I think gross receipts were probably  
17 5,000, expenses were 3,000, something like that.  
18 Q Was there -- was there some thought of  
19 using tour bus companies with respect to that Richard  
20 Leigh event?  
21 A That's what the town of Abingdon -- we  
22 were part -- yes.  
23 Q To do what?  
24 A To be part of a series of tour bus stops.  
25

231

1 (12/11/15 email from David Matlock to  
2 David Matlock RE: Draft Proposal and  
3 attached Eastman Credit Union Proposal  
4 marked as Matlock Exhibit Number 35)  
4 BY MR. GRIMES:  
5 Q Exhibit 35 is an email David Matlock to  
6 David Matlock at the top of the page.  
7 Below that is an email from David Matlock  
8 to K. Helms.  
9 who is K. Helms?  
10 A She is a vice president with Eastman  
11 Credit Union.  
12 Q Dated September 26, 2013.  
13 A Yes.  
14 Q You write, "Kristy, attached is a draft

Matlock dep tran  
15 of the proposal requesting \$10,000 to support the Great  
16 Expectations Program (foster care) at VHCC by becoming  
17 the major sponsor for the Richard Leigh Songwriters  
18 Music Festival."

19 A Um-hum.

20 Q And why are you writing to Miss Helms  
21 here?

22 A In 2013, I was the vice president of  
23 VHCC, and I was soliciting \$10,000 on behalf of VHCC's  
24 foundation.

25 Q why did you send this email to yourself

232

1 27 months later in December of 2015?

2 A Because I wanted to get my sponsorship  
3 contribution requests so that I could see how to write  
4 another one for future events that we may or may not  
5 have at the Center.

6 (4/29/16 emails between Sean webb and  
7 David Matlock RE: Richard Leigh Music  
8 Festival questions marked as Matlock  
Exhibit Number 36)

9 BY MR. GRIMES:

10 Q You're familiar with something called  
11 Facebook; correct?

12 A Yes.

13 Q And you know that sometimes people  
14 advertise on Facebook; correct?

15 A Yes.

16 Q Here is an email from Susan webb to David  
17 Matlock dated April 29, 2016.

18 MR. HARDY: Quick correction. You mean  
19 Sean webb.

20 Matlock dep tran  
MR. GRIMES: Sean Webb.

21 BY MR. GRIMES:

22 Q And she writes -- man or woman, Sean  
23 Webb, Mr. Matlock?

24 A Yes.

25 Q Is it a?

233

1 A Man.

2 Q "Hello David, Monica Hall from Abingdon  
3 CVB has some questions about the table for group tour  
4 operators at the Richard Leigh Festival coming up:  
5 One, what time does it start on Saturday? It isn't  
6 listed on the website or Facebook."

7 Why was it not advertised on Facebook?

8 A This is a VHCC event.

9 Q Okay.

10 A As I stated earlier, I am working with  
11 the town of Abingdon about future events for the Center  
12 to bring in tour buses to help them promote tourism.

13 Q So --

14 A I had asked the college if they would,  
15 based on my years of good will with them, if they would  
16 comp a table so that I could bring tour bus companies  
17 in to see Richard Leigh.

18 Q Is Sean Webb Jeff Webb's son?

19 A Yes.

20 (5/23/17 email string between David  
21 Matlock, Jan Reeves, Doris Shuman, Amy  
22 Osborne, RE: Need info on Richard Leigh  
event marked as Matlock Exhibit Number  
37)

23 BY MR. GRIMES:

24 Q Exhibit 37, more emails. About the

Matlock dep tran  
25 middle of the page, the writer asks -- and it appears 234

1 to be Doris Shuman.

2 who is she?

3 A She was the treasurer for the Rotary Club  
4 at the time.

5 Q She writes, "Last year we bought it from  
6 Blue Ridge Beverage."

7 A Um-hum, yes.

8 Q It looks like, "walling is used in the  
9 past too. Total was 1027.79. David Matlock paid and I  
10 was never given the receipt."

11 what receipt did she not get?

12 A The day that they delivered the beer for  
13 Rotary, no one was there to sign for it for Rotary, and  
14 if they didn't have beer, there was going to be no  
15 beer. I paid for that out of my pocket and waited on  
16 my money.

17 Q She writes right below what I just read,  
18 "385.60 was wine and 642.19 was beer. But if you will  
19 remember there was a ton left over."

20 So did you ever turn in the receipt?

21 A Yes. This Rotary paid me. This is a  
22 Rotary event. Rotary paid me as a Rotary member. I  
23 got reimbursed.

24 Q Have you ever tried to set up a nonprofit  
25 for Richard Leigh?

235

1 A We've talked about it, so the answer is  
2 no.

3 (May 2017 email string between Regina  
Page 197

Matlock dep tran  
Belcher, David Matlock, Phillip Hearl RE:  
Scan from a Xerox WorkCentre marked as  
Matlock Exhibit Number 38)

4  
5

6 BY MR. GRIMES:

7 Q Did the Foundation's attorney ever help  
8 with trying to set up a nonprofit for Richard Leigh?

9 A No.

10 Q Who is the Foundation's attorney?

11 A It's Phillip, as referenced here.

12 Q Phillip; last name?

13 A Hearl, H-e-a-r-l.

14 Q Did you ever provide a written statement  
15 concerning Carmack's complaints to the Office of  
16 Inspector General?

17 A Yes.

18 Q Did you ever email anyone concerning his  
19 complaint?

20 A I don't recall.

21 Q You don't remember whether you ever sent  
22 or received any emails concerning Carmack's complaint  
23 to the OSIG; is that correct?

24 A That's a different question.

25 The OSIG communicated with me about a

236

1 complaint. I never knew it was Mr. Carmack.

2 (10/17/17 email from Tim Sadler to  
3 dm4qb@virginia.edu RE: Hotline - SWVHEC  
4 info 1 with attachments marked as Matlock  
Exhibit Number 39)

5 BY MR. GRIMES:

6 Q Do you get a paycheck stub from your job  
7 at the Center?

8 A No. There's -- there's a website you can

9 go and look at them.

10 Q Do you know whether the paycheck stubs  
11 for State employees have something written if you have  
12 a complaint concerning fraud, waste and abuse, call  
13 this number?

14 A I don't know if it's on the check stub.  
15 We have it posted all over our building.

16 Q Exhibit 39 is some documents produced by  
17 the defendant in this case.

18 On the first page, Mr. Sadler writes --  
19 and, incidentally, who is Dm4qb@virginia.edu?

20 A That's me.

21 Q Is this your Center email address?

22 A That's the first time I think I've seen  
23 someone use that address.

24 I'm not so certain that I actually  
25 received that email that way.

237

1 Q But that is one of your email addresses?

2 A I've never used it.

3 Q In October of 2017, did you have more  
4 than one email address?

5 A In October of '17, I only had the  
6 South -- swcenter.edu.

7 Q You didn't have a personal email address?

8 A I have one.

9 Q What's your personal email address?

10 A I don't -- I don't have it anymore. I  
11 don't know, hotmail something.

12 Q When did you shut it down?

13 A I don't even know if it's shut down. I'm

14 not even sure.

15 when my children were in college years  
16 ago, they showed me how to set one up. I don't even  
17 know -- I barely used it.

18 Q But it's hotmail?

19 A It could be. That was my best guess  
20 today.

21 Q Is it your testimony that you don't know  
22 your personal email address?

23 A That would be a fair statement.

24 Q Is it a true statement?

25 A Yeah.

238

1 Q Here Mr. Sadler writes to you, "Dear  
2 Mr. Matlock, thank you for speaking with me yesterday  
3 regarding certain matters I am reviewing at Southwest  
4 Virginia Higher Education Center. As mentioned, I am  
5 sending you six emails in order of our discussion.  
6 This one involves the HR access which is documented  
7 along with the position description and the attached  
8 items."

9 Did you make any changes in the access to  
10 HR documents following this email?

11 A That would be a true statement.

12 Q What changes did you make?

13 A Those recommended by OSIG.

14 Q What were they?

15 A That Mr. Tolbert's job description be  
16 updated and he be paid appropriately for the access  
17 that he had.

18 Q So he's going to be paid more money?



19 A Yes.  
20 Q At a time you're laying off people?  
21 A Responsibility, restructuring.  
22 (October 2017 emails between Tim Sadler,  
23 David Matlock RE: Holston IT Proposal,  
24 Tim Meredith, Multi-Period Expense  
Comparison attachment marked as Matlock  
Exhibit Number 40)  
25

239

1 BY MR. GRIMES:  
2 Q Exhibit 40 is another email from Tim  
3 Sadler to you dated October 17, 2017. He writes,  
4 Attached is a vendor proposal to perform work similar  
5 to the Tate's," T-a-t apostrophe S [sic], "and cost  
6 comparison with their pay for 2016. My contact  
7 indicated that the Tate's annual pay was similar for  
8 the three to four years prior to the 2016 provided."  
9 Did I read that correctly?

10 A Um-hum.  
11 MR. KINCER: Yes?  
12 THE WITNESS: I'm sorry, yes.

13 BY MR. GRIMES:  
14 Q Did you continue to employ the Tates'  
15 services after the date of this email?

16 A Yes.  
17 (10/17/17 email from Tim Sadler to David  
18 Matlock re: Hotline - SWVHEC and  
19 attachments related to grant given to  
Virginia Middle School marked as Matlock  
Exhibit Number 41)

20 BY MR. GRIMES:  
21 Q Exhibit 41 is another email from Tim  
22 Sadler to you. He writes, "Attached is documentation  
23 related to the grant given to Virginia Middle School.

24 In response, I am looking for documentation showing  
25 that other schools were notified during this time

240

1 period of grant money available for a similar use."

2 Did you provide that notification that  
3 other schools were notified?

4 A I provided Tim Sadler the information to  
5 justify his finding that it was -- it was an  
6 unsubstantiated claim.

7 Q My question is a little different.

8 Did you provide to him documentation  
9 showing that other schools were notified?

10 A No.

11 Q Because that documentation never existed;  
12 correct?

13 A The action existed.

14 (10/17/17 email from Tim Sadler to David  
15 Matlock re: Hotline - SWVHEC info 4 with  
16 attached calendar marked as Matlock  
Exhibit Number 42)

17 BY MR. GRIMES:

18 Q Exhibit 42 is another email from Tim  
19 Sadler, OSIG, to you dated October 17, 2017.

20 He writes, "Attached is your calendar  
21 with dates highlighted in yellow where you may have  
22 traveled and not submitted a travel voucher. At  
23 link --" and then he described a link "-- page 9, first  
24 sentence, is listed the retirement to submit travel  
25 reimbursements within 30 days of travel."

241

1 were you not doing that?

2                   A       Matlock dep tran  
3                               (10/17/17 email from Tim Sadler to David  
4                               Matlock re: Hotline - SWVHEC info 6 with  
5                               attached maintenance contract and sole  
6                               source documentation marked as Matlock  
7                               Exhibit Number 43)

8 BY MR. GRIMES:

9                   Q       Exhibit 43 is an email from Mr. Sadler to  
10                           you dated October 17, 2017. There he writes, "Attached  
11                           is the maintenance contract documentation and sole  
12                           source document which supports that the sole source  
13                           approval occurred after the work was completed."

14                           And that was true, wasn't it?

15                   A       Yes.

16                           (10/17/17 email from Tim Sadler to David  
17                           Matlock re: Hotline - SWVHEC info 5 with  
18                           attached clocked work dates/times for  
19                           1016-1017 marked as Matlock Exhibit  
20                           Number 44)

21 BY MR. GRIMES:

22                   Q       Exhibit 44 is another email from Tim  
23                           Sadler to you dated October 17, 2017. There he writes,  
24                           "Attached is your clocked work dates and times for 2016  
25                           to 2017. At the back of the document, at pages 23 and  
26                           24, is the policy issued by your predecessor."

27                           Your predecessor was Rachel Fowlkes;  
28                           correct?

29                   A       Yes.

242

30                   Q       Did you violate this policy in any way?

31                   A       No.

32                           (10/25-26/17 email string between Richard  
33                           Scholl and David Matlock marked as  
34                           Matlock Exhibit Number 45)

35 BY MR. GRIMES:

36                   Q       Exhibit 45 is an email at the top of the

7                                   Matlock dep tran  
page from Richard Scholl to you.

8                                   And who is he?

9                   A       He is a police officer inside the Office  
10 of OSIG.

11                  Q       About the middle of the page, he writes,  
12 "Dear Mr. -- Mr. Matlock, thank you for meeting with us  
13 today. We really appreciated your time. It was  
14 extremely helpful. Thank you for this follow-up as  
15 well. We still plan to be at your office at 8:15 to  
16 8:30 and speak with Mr. Carmack."

17                               What were your discussions with Richard  
18 Scholl referenced here?

19                  A       An ongoing investigation into Mr. Carmack  
20 and the Foundation.

21                  Q       And what did Mr. Scholl want to talk with  
22 Mr. Carmack about?

23                  A       He didn't tell me.

24                  Q       Do you know what he wanted to talk with  
25 Mr. Carmack about?

243

1                  A       No.

2                  Q       Did you ever learn what he wanted to talk  
3 with Mr. Carmack about?

4                  A       I assume the Foundation.

5                  Q       The Foundation is a business entity;  
6 correct?

7                  A       It's a private foundation separate from  
8 the Center, yes.

9                  Q       Specifically, have you learned or  
10 heard -- have you heard what Mr. Scholl wanted to talk  
11 to Mr. Carmack about?

12                   A       Matlock dep tran  
                  When I read his report, yes.

13                   Q       And what was it?

14                   A       What was...

15                   Q       What is it that Mr. Scholl wanted to talk  
16 with Mr. Carmack about?

17                   A       Well, I only know what the findings said,  
18 sir. I don't know what they talked about.

19                   MR. GRIMES: Mark that, please.

20                   (10/27/17 email from Tid Sadler to David  
21 Matlock re: Hotline State Policies  
                  marked as Matlock Exhibit Number 46)

22 BY MR. GRIMES:

23                   Q       Exhibit 46 is another email to you from  
24 Mr. Sadler dated October 27, 2017. He says, "Following  
25 are links to the policies we talked about, lunch break

244

1 and sole source procurement."

2                   And what is sole source procurement?

3                   A       That's the area handled by our finance  
4 division if you have a vendor that may be the only  
5 vendor within reason that can execute a need, provide a  
6 need for a particular product.

7                   Q       What is the lunch break issue that was of  
8 concern to Mr. Sadler?

9                   A       I don't think there was a concern with  
10 Mr. Sadler with lunch break. I believe that was my  
11 concern.

12                   Q       When was your concern?

13                   A       An ongoing policy inherited.

14                   Q       Which was what?

15                   A       That some employees -- Miss Fowlkes did  
16 not want people to leave the building. So if they

17                               Matlock dep tran  
17    stayed in the building and they remained on call, they  
18    could count that as their lunch. They didn't have to  
19    clock out.

20                               Primarily around exempt employees.

21                               (1/17/18 email from Kathleen Shaw to  
22                               David Matlock re: FOIA 2018-051 SWBHEC  
23                               Case Report 16077 and attached responsive  
                              documents marked as Matlock Exhibit  
                              Number 47)

24    BY MR. GRIMES:

25                   Q       Exhibit 47 is an email from Sean --

245

1    excuse me, Kathleen Shaw at the Inspector General's  
2    Office to you dated January 27, 2018.

3                               Right behind that is a letter dated  
4    November 17, 2017, from Michael Westfall, CPA, Acting  
5    State Inspector General, to Dietra, D-i-e-t-r-a, Trent.

6                               Did you FOIA a copy of this file right  
7    after Carmack's employment ended?

8                   A       I FOIA'd the file -- wanted to see the  
9    file.

10                              And when Miss Trent called me, Secretary  
11    Trent called me in November to tell me she had a  
12    letter, I asked if I could see it, and she said at that  
13    point I couldn't, but I could FOIA -- fill out the  
14    paper work for the FOIA.

15                              So at some point early there in November,  
16    I wanted to get a copy of everything.

17                   Q       And did you request that in writing?

18                   A       I believe that was a phone conversation.

19                   Q       Your FOIA request was by phone?

20                   A       It was -- it was a informal request. I  
21    mean, I wanted to find out what do I need to do. I had

Matlock dep tran  
22 seen a draft copy from Tim Sadler. Tim had -- I  
23 believe it was Tim that provided a draft copy, because  
24 he told me I would need to start working on my -- I  
25 would have 30 days to work on my responses.

246

1 when I didn't hear anything, I  
2 immediately called Dietra Trent at some point.

3 Q Did you tell anyone about the OSIG  
4 complaint?

5 A well, I'm sure I did.

6 Q who did you tell?

7 A I told my wife. I had to tell  
8 Mrs. Hensley because she had to help me get some of  
9 this documentation. I had to tell people at HR at UVA  
10 to help me with some responses.

11 Q what about the chairman of the board?

12 A Oh, yes, I told him, and I told  
13 Elizabeth, the Attorney General.

14 Q Bill Carrico?

15 A Bill Carrico, yes.

16 Q You told him about the OSIG investigated  
17 complaint?

18 A I called him and told him there had been  
19 a complaint made against me, yes. I think a board  
20 chairman should know that.

21 Q And what did he say?

22 A To work with Elizabeth.

23 Q Did he say anything else?

24 A No.

25 Q who is the first person you told about

247

1 the complaint after you spoke with the investigator?

2 A Probably my wife.

3 Q Who is the next person?

4 A Probably Kathy Hietala.

5 Q I don't want you to guess. Do you know?

6 Do you know that to be true?

7 A I know that to be my recollection.

8 Q Your memory.

9 A Yeah.

10 Q After getting off the phone with the  
11 investigator, you had a meeting in your office with  
12 Kathy Hietala, Jeff Webb, Joyce Brooks and Adam  
13 Tolbert; correct?

14 A No.

15 Q You did not?

16 Are you certain of that?

17 A I'm certain that I have no recollection  
18 of -- your question was immediately getting off the  
19 phone I had a meeting.

20 Q I didn't say "immediately." After you  
21 got off the phone.

22 So reconsider your answer, please.

23 Did you have a meeting in your office  
24 with Kathy Hietala, Jeff Webb, Joyce Brooks and Adam  
25 Tolbert?

248

1 A Possibly. I met with them quite often,  
2 so I would say yes, possibly.

3 Q Yes, possibly.

4 A Um-hum.

5 Q So possibly yes?



6 A Possibly yes.  
7 Q And possibly no?  
8 A Possibly yes.  
9 Q Possibly yes or possibly no?  
10 A Possibly yes.  
11 Q And possibly no?  
12 A Possibly yes.  
13 Q Let me try to understand what you're  
14 saying.  
15 After you got off the phone with the  
16 investigator, did you have a meeting with Kathy  
17 Hietala, Jeff Webb, Joyce Brooks and Adam Tolbert?  
18 A That's a long time ago. I don't remember  
19 if I did or didn't, but there's a strong possibility  
20 that I did. I met with them on a regular basis.  
21 Q But as you sit here today, you don't have  
22 a memory of that meeting; correct?  
23 A No.  
24 MR. GRIMES: Next exhibit.  
25

249

1 (11/29/17 email from David Matlock to  
2 Debbie Rigdon re: WTA Request SW  
3 Virginia Higher Education Center marked  
as Matlock Exhibit Number 48)

4 BY MR. GRIMES:

5 Q Exhibit 48 is an email from you to Debbie  
6 Rigdon at DHRM; correct?  
7 A Yes, that's correct.  
8 Q Dated November 29, 2017.  
9 A Um-hum.  
10 Q And there you write, "Debbie, is there

11 anything else you need from me at this time? I had a  
12 conversation with Tim Sadler, State Hotline Manager,  
13 and can bring you up to speed on that when you can  
14 talk. Thanks for your help. David."

15 what did you tell Debbie Rigdon on  
16 November 29, 2017?

17 A I believe that I probably told her that  
18 Mr. Sadler had called me to tell me the investigation  
19 had been concluded, and I'm certain he's the one that  
20 called and said, "I've written my recommendation and  
21 forwarded it on to the Secretary of Education."

22 Q while working as the executive director  
23 of the Center, did you meet with every department  
24 manager every week?

25 A Not every week, no, sir.

250

1 Q Did you stop meeting with Carmack at some  
2 point on a weekly basis?

3 A No.

4 Q Did you meet with him on a weekly basis  
5 until the time his employment ended?

6 A I met with him on a consistent basis, on  
7 a -- we had weekly meetings. We had weekly meetings  
8 with the team, and sometimes we didn't always meet.  
9 They were scheduled.

10 Q Do you know which employees of the Center  
11 the OSIG investigator spoke with?

12 A They didn't tell me anything like that.

13 Q When you spoke with the investigator for  
14 the first time, did you wonder who made the complaint?

15 A Well, I thought it would probably be

Matlock dep tran

16 someone in the building, so, yeah, I wondered, yes.

17 Q Did any employee ever talk -- tell you  
18 that he or she had spoken with the OSIG investigator?

19 A I don't believe so.

20 (11/17/17 letter from Michael C. Westfall  
21 with the Office of the State Inspector  
22 General to Dr. Dietra Y. Trent, Secretary  
of Education marked as Matlock Exhibit  
Number 49)

23 BY MR. GRIMES:

24 Q Exhibit 49 is a letter dated November 17,  
25 2017.

251

1 When did you first learn of this letter?

2 A I don't recall.

3 Q How did you first learn of this letter?

4 A It's possible that -- it's possible that  
5 Elizabeth sent me a copy or Tim Sadler sent me a copy.  
6 I did receive a draft at some point from someone.

7 Q A draft or the letter?

8 A I believe it was a draft.

9 Q Did you make all of the changes set forth  
10 in this letter?

11 A Yes.

12 Q Were there any changes that you failed to  
13 make?

14 A No.

15 (10/31/17 and 11/8/17 email string  
16 between Tim Sadler and David Matlock re:  
17 State Hotline review with attached  
Westfall letter marked as Matlock Exhibit  
Number 50)

18 BY MR. GRIMES:

19 Q Exhibit 50 is more emails. The one at  
20 the top of the page is from Tim Sadler to you dated

Page 211

21 November 8, 2017, and there he writes, "Mr. Matlock,  
22 thank you for the information. I have completed the  
23 draft of my investigation report."

24 A Okay.

25 Q "Although it is not -- although it has

252

1 not been reviewed by my supervisor, I do not expect  
2 that significant changes will be made. Please review  
3 the attached and let me know your thoughts."

4 Did you get back with him and let him  
5 know your thoughts?

6 A I don't recall. I know that I read the  
7 draft, and my big concern was, when I read the draft,  
8 was the timeliness of getting all this done. I was  
9 very concerned about the 30 days.

10 Q Did you respond to this email as he  
11 requested?

12 A "Please review --"

13 I probably did if he asked for that. It  
14 says "know your thoughts."

15 Q Do you have a memory of responding to  
16 this email?

17 A No.

18 Q Did you do so in writing?

19 A It could have been a phone call.

20 Q Do you have a memory of responding at  
21 all?

22 A I think I did, because I was concerned  
23 about the 30 days.

24 Q Do you have a memory of what you told  
25 him?

1 A I would get right on it.

2 Q Did you ever ask for an extension of  
3 time?

4 A No.

5 Q Did you ever shoot him an email saying,  
6 "Good to hear from you. 30 days might be problematic,"  
7 ask for extension, anything of that nature at all?

8 A I don't remember if I did.

9 Q Did you send the letter to Elizabeth  
10 Griffin on January 10, 2018?

11 A I would like to think I sent it to her  
12 before then.

13 Q But you don't know one way or the other;  
14 correct?

15 A I don't -- I don't remember. There was a  
16 lot going on.

17 MR. HARDY: Actually, Exhibit 50 is a  
18 good round number.

19 Can we take a break?

20 MR. GRIMES: Sure.

21 (A recess was taken from 3:21 p.m. until  
22 3:29 p.m.)

23 MR. GRIMES: Back on the record.

24 BY MR. GRIMES:

25 Q Did Bill Carrico ever say anything

254

1 negative about Duffy Carmack?

2 A No.

3 (3/26/18 email string between David  
Matlock, Elizabeth Griffin, Kathy Hietala

4 Matlock dep tran  
re: OSIG Response letter and 3/26/16  
5 letter from David Matlock to The  
Honorable Atif Qarni, Secretary of  
6 Education marked as Matlock Exhibit  
Number 51)

7 BY MR. GRIMES:

8 Q Exhibit 51, more emails. The one at the  
9 top of the page from you to Elizabeth Griffin, copied  
10 to Kathy Hietala. And you write, "Attached is the  
11 final singed version --" supposed to be "signed," just  
12 an error. "Thanks for your support, David"; correct?

13 A Yes.

14 Q Is this your response to the OSIG's  
15 letter of November 17, 2017?

16 A Yes.

17 Q So it took you four and a half months to  
18 respond?

19 A Yes.

20 Q And you say to Elizabeth Griffin, "Thanks  
21 again for your support."

22 Did you feel that Elizabeth Griffin had  
23 supported you through this difficult time?

24 MR. HARDY: Objection, attorney/client  
25 privilege.

255

1 Do not answer.

2 BY MR. GRIMES:

3 Q Why are you thanking Elizabeth Griffin  
4 for your support -- for her support?

5 A I assume she, I mean, she provided  
6 guidance and she always seemed to go over the top in  
7 representing the Center, so I just was being nice and  
8 saying thank you.

9 Matlock dep tran  
"Thank you for your support" is kind of a  
10 signature that I use a lot.

11 Q My question to you was, did you feel that  
12 Elizabeth Griffin had supported you? I wasn't asking  
13 what she said to you. But did you feel that she had  
14 supported you?

15 A She did her job well.

16 Q Have you heard from any Center employee  
17 that he or she thought that the complainant was Duffy  
18 Carmack?

19 A No.

20 Q Did you ever discuss the OSIG complaint  
21 with Joyce Brooks?

22 A Yes.

23 Q For what purpose?

24 A Navigating the process to do what Tim  
25 Sadler said was necessary for Adam Tolbert.

256

1 Q Did you show the OSIG letter of  
2 November 17, 2017, to anyone other than Elizabeth  
3 Griffin?

4 A I don't recall.

5 Q Did you show it to any Center employees?

6 A I don't recall.

7 Q Can you rule out the possibility that you  
8 showed the letter to any Center employees?

9 A I couldn't rule it out.

10 Q Did you show it to the chairman of the  
11 board?

12 A I'm certain I did.

13 Q How frequently does the board of

14 directors meet?

15 A Twice a year.

16 Q Is the financial position of the Center  
17 presented at each meeting?

18 A Yes.

19 Q Who typically would be responsible for  
20 presenting that information?

21 A I'm not sure before I came. Under my  
22 tenure, it was a 50/50 split between myself and  
23 Mr. Carmack.

24 Q And do you know when Mr. Carmack last  
25 presented the financial information to the board?

257

1 A Maybe December '16, but he continued to  
2 present the financial information of the Foundation at  
3 every board meeting.

4 THE COURT REPORTER: Excuse me.

5 (Discussion off the record)

6 BY MR. GRIMES:

7 Q December of 2016?

8 A (Nodding).

9 Q Did you report the financial information  
10 to the board during the December 2017 meeting?

11 A Yes.

12 Q Did you report that the overall financial  
13 strength of the Center was at an all time high?

14 A I believe I did.

15 Q And that was true, wasn't it?

16 A Nongeneral revenue was at an all time  
17 high.

18 Q And who was Paula Moad, M-o-a-d?



19                   A       Matlock dep tran  
Paula Moad is currently the testing  
20 center coordinator. She's an hourly position.  
21                   Q       At the Center?  
22                   A       Yes.  
23                   Q       Did she contact UVA HR at some point  
24 about the status of a position that was open?  
25                   A       I was told she did.

258

1                   Q       Was that the position that was ultimately  
2 given to Hannah Hietala, Kathy Hietala's daughter?  
3                   A       No.  
4                   Q       How did you find about Moad contacting  
5 UVA HR?  
6                   A       I believe Donna Kauffman called me.  
7                   Q       Did you fuss at Paula Moad for contacting  
8 UVA HR?  
9                   A       No.  
10                  Q       Did she file a grievance?  
11                  A       I'm not aware of a grievance filed by  
12 Paula Moad.  
13                  Q       So you don't know what happened to the  
14 grievance?  
15                  A       I don't think a grievance ever existed.  
16                  Q       That's what you believe?  
17                  A       That's what I believe, yes, sir.  
18                  Q       Do you know whether Joyce Brooks ever  
19 stopped the grievance process?  
20                  A       No.  
21                  Q       Was Carmack Paula Moad's immediate  
22 supervisor?  
23                  A       Yes.

Matlock dep tran  
24 Q was the position given to Hannah Hietala  
25 without posting it first?

259

1 A Was the position given -- can you  
2 rephrase that and give me a time frame?

3 Q The time frame is ever.

4 And was the position that Hannah Hietala  
5 took given to her without it being posted?

6 A You're talking about the complaint that  
7 you alleged by Paula?

8 Q Um-hum.

9 A No.

10 Q Or any position that Hannah Hietala ever  
11 filled, did she fill it without it being posted?

12 A Yes.

13 Q Which position?

14 A Her current position.

15 Q Which is?

16 A She is the special events coordinator.

17 Q And that's what she does, coordinate  
18 special events?

19 A That's the majority of her job.

20 Q Did you ever think of eliminating that  
21 position to save money? Maybe bringing on a marketing  
22 person?

23 A No.

24 Q Did you become aware that Duffy Carmack  
25 filed his own grievance after the Paula Moad incident?

260

1 A No.

2 Q You never learned of that.

3 A No.

4 Q Did you ever hear that Duffy Carmack told  
5 the ombudsman of UVA about the concerns he later  
6 reported to the OSIG?

7 A I was never contacted by anyone from UVA.

8 Q My question is a little different.

9 Did you ever become aware that Duffy  
10 Carmack had told the UVA ombudsman about the concerns  
11 he later reported to the OSIG?

12 A I became aware the same day the board  
13 did.

14 Q What was UVA's role with respect to the  
15 Center at the time?

16 A Being the first -- we contracted them to  
17 do our fiscal practices and our HR practices. We paid  
18 for back room service.

19 Q What does "back room service" mean?

20 A Some of the heavy lifting; processing  
21 payroll, processing payments, cutting checks, holding  
22 all of our funds. It keeps us from having to have as  
23 many employees.

24 Q So it's a cost-saving thing?

25 A Exactly.

261

1 Q Did you ever learn that Carmack also  
2 reported his concerns to DHRM?

3 A I learned when -- the letter that he  
4 wrote in December of '17 was my first knowledge of  
5 that.

6 Q Would you agree that both UVA and DHRM  
7 played some role in the WTA process?

8 A Yes.  
9 Q Are you familiar with the whistleblower  
10 Act?  
11 A Yes.  
12 Q What is it?  
13 A It's, in summary, it's just a protection;  
14 if someone makes an allegation that is true, that they  
15 get some protection.  
16 Q What if it's not true but they believe it  
17 to be true?  
18 MR. HARDY: Objection to the extent it  
19 calls for a legal conclusion.  
20 MR. GRIMES: All right.  
21 MR. HARDY: Please answer.  
22 THE WITNESS: Oh. I would like to think  
23 they'd still be protected. That would be my  
24 understanding of the rule and the law and seems to be  
25 the fair way.

262

1 BY MR. GRIMES:  
2 Q Of your years of service with the State,  
3 have you been the subject of other OSIG complaints?  
4 A No.  
5 Q This is the first?  
6 A Yes.  
7 Q Did you become aware that Duffy Carmack  
8 wrote a letter to the board of directors of the  
9 trustees for the Center in December of 2017?  
10 A Yes, I became aware that he wrote a  
11 letter.  
12 Q How did you become aware of that?

13 A Mr. Carmack came into my office I believe  
14 the day before the meeting and shared the letter with  
15 me.

16 Q Did you ever discuss the letter with  
17 Senator Carrico?

18 A I know I called Elizabeth. I don't  
19 recall if I discussed it with Senator Carrico.

20 Q Do you -- so maybe you did; correct?

21 A Maybe, but I don't recall.

22 Q Do you know about Senator Carrico's  
23 discussions with Carmack right before the board of  
24 trustees meeting in December about the letter?

25 A Yes.

263

1 Q How did you hear about that?

2 A It is my understanding that Elizabeth  
3 required him to have a meeting in the boardroom with  
4 Mr. Carmack.

5 Q "Him" would be Senator Carrico?

6 A Yes.

7 I believe she instructed him to, as  
8 chairman of the board, he needed to address -- to  
9 investigate concerns of any employee.

10 (12/7/17 letter to Members of the Board  
11 of Trustees Southwest Virginia Higher  
12 Education Center from William D. "Duffy"  
Carmack, CFO marked as Matlock Exhibit  
Number 52)

13 BY MR. GRIMES:

14 Q Exhibit 52 is the letter dated  
15 December 7, 2017.

16 When did you first see this letter in  
17 relation to its date?

18 A I think I stated earlier I think it would  
19 have been December 6th, the day before the meeting.

20 Q Do you know whether Elizabeth Griffin  
21 recommended that the board not go into closed session  
22 to discuss the letter?

23 A I don't recall.

24 Q Didn't board member Steve Cochran move to  
25 go into closed session and, due to Elizabeth Griffin

264

1 and Senator Carrico, the request was denied?

2 A I do remember Mr. Cochran asking if they  
3 would be discussing this and if they needed to go into  
4 closed session. I don't -- I don't remember a motion  
5 being made, but that would be in the minutes.

6 Q Did they or did they not go into closed  
7 session?

8 A They did not go into closed session.

9 Q Was a third-party mediation ever  
10 attempted to resolve the issues raised by Mr. Carmack  
11 in his letter?

12 A No.

13 Q Did you ever use mediators in your  
14 business?

15 A From time to time.

16 (1/11/18 letter from William D. Carmack  
17 to Senator Carrico marked as Matlock  
Exhibit Number 53)

18 BY MR. GRIMES:

19 Q Exhibit 53 is a letter to  
20 Senator Carrico -- Senator Carrico dated January 11,  
21 2018, from Mr. Carmack. There, among other things, he  
22 writes in the first paragraph that you have stated that

Matlock dep tran

23 "Senator Carrico is my sugar daddy."

24 Have you ever referred to Senator Carrico

25 as your "sugar daddy"?

265

1 A No.

2 Q Are you aware that Senator Carrico did

3 not send this letter to the rest of the board until

4 February 1, 2018?

5 A Mr. -- no.

6 (2/1/18 and 2/9/18 emails between David  
7 Matlock and Elizabeth Griffin, Senator  
8 Carrico re: Duffy Carmack's Letter of  
January 11 marked as Matlock Exhibit  
Number 54)

9 BY MR. GRIMES:

10 Q The email at the bottom of the page is an

11 email from Bill Carrico addressed to Fellow Board

12 Members dated February 1, 2018.

13 In the second paragraph of his email, he

14 writes, "First, I ask that you not respond to this

15 letter independently."

16 Do you know why he said that?

17 A I do not.

18 (2/20/18 letter from Charles W. Carrico,  
19 Sr. to William D. Carmack marked as  
Matlock Exhibit Number 55)

20 BY MR. GRIMES:

21 Q Exhibit 55 is a letter from Bill Carrico

22 to Duffy Carmack dated February 20, 2018.

23 Have you seen this before?

24 A I don't believe so.

25 Q He says in the first sentence, "Over the

266

Matlock dep tran  
1 past few weeks I have personally consulted with  
2 numerous members of the board of trustees regarding  
3 your letter of January 11, 2018."

4 Do you know who he spoke with on the  
5 board of trustees?

6 A No.

7 Q Do you know whether this letter was  
8 actually drafted by Elizabeth Griffin?

9 A No. I would have no knowledge of that.

10 (February 2018 emails between David  
11 Matlock, Elizabeth Griffin, Kathy  
12 Hietala, Senator Carrico re: Conference  
Call Monday 2/12/18 marked as Matlock  
Exhibit Number 56)

13 BY MR. GRIMES:

14 Q Exhibit 56 is a series of emails. If you  
15 look on the second page, you will see there an email  
16 from Elizabeth Griffin to you dated February 15, 2018.  
17 And there she writes, "David and Senator Carrico,  
18 please see attached draft letter to Duffy Carmack. As  
19 we discussed earlier this week, I intentionally kept it  
20 brief."

21 Do you recall receiving this email on  
22 February 15, 2018?

23 A Yes.

24 Q Does that refresh your recollection about  
25 whether you saw the letter I showed you moments ago,

267

1 Exhibit 55?

2 A Yes, I must have seen it.

3 (2/20/18 email from Elizabeth Griffin to  
4 Kathy Hietala, Senator Carrico re:  
5 Letter from Senator Carrico and 2/16/18  
letter from Charles W. Carrico, Sr. to  
William D. Carmack marked as Matlock  
Exhibit Number 57)



6

7 BY MR. GRIMES:

8 Q Exhibit 57 is another email from  
9 Elizabeth Griffin to Kathy Hietala and copied to you.  
10 And there she writes, "Kathy, please prepare the  
11 attached letter for sending on Higher Ed. Center  
12 letterhead."

13 And if you look at Exhibit 55, you will  
14 see it is actually on Higher Ed. Center letterhead;  
15 correct?

16 A Yes, that's correct.

17 Q Now, you called Duffy Carmack into your  
18 office on January 4, 2018 and terminated his  
19 employment; correct?

20 MR. HARDY: Object to form.

21 THE WITNESS: Incorrect. I met with  
22 Mr. Carmack in a boardroom to inform him of his choices  
23 with the WTA.

24 BY MR. GRIMES:

25 Q Did you tell him that his work was

268

1 impeccable?

2 A Maybe.

3 Q Is there a particular reason you chose  
4 the date January 4, 2018?

5 A No.

6 (1/2/18 email from David Matlock to Carol  
7 Summers, Donna Kauffman, Debbie Rigdon  
marked as Matlock Exhibit Number 58)

8 BY MR. GRIMES:

9 Q Exhibit 58 is an email from you to  
10 Elizabeth -- strike that -- Carol Elizabeth Summers and

Matlock dep tran  
11 Donna Kauffman and Debbie Rigdon. And there you write  
12 By email dated January 2, 2018, "Due to commitments  
13 with the Tobacco Commission, I do not plan to pull the  
14 trigger on the WTA until Thursday, January 4th."

15 What were your commitments?

16 A I believe that there was a series of  
17 Tobacco Commission meetings earlier that week, the 2nd  
18 and the 3rd.

19 Q Where were those meetings?

20 A I believe they were over here on Seventh  
21 and the -- the Tobacco Commission is located next to  
22 Hampton Inn's -- a hotel next to them. They like to  
23 have a lot of meetings there. I believe that could be  
24 where it was at, Richmond, Virginia.

25 Q Do you have a memory of being at Tobacco 269

1 Commission meetings on January 2nd or 3rd --

2 A Yes.

3 Q -- of 2018?

4 A Yes, I believe I was there.

5 (5/22/17 email from Donna Kauffman to  
6 David Matlock, Adam Tolbert RE: Duffy's  
7 notice + WVA Waiver marked as Matlock  
Exhibit Number 59)

8 BY MR. GRIMES:

9 Q There's an email from Donna Kauffman to  
10 you dated May 22, 2017. "We had discussed --" strike  
11 that. Back up.

12 Salutation -- or greeting, "Hi David and  
13 Adam, we had discussed Duffy being paid leave during  
14 his notice time and not coming back into the office."

15 Do you remember seeing this email?

Matlock dep tran  
16 A Yes.  
17 Q Why was Carmack not permitted to work  
18 during his notice period?  
19 A This was a scenario.  
20 Q On January 4, 2018, when you told  
21 Mr. Carmack that his employment was ending --  
22 A Right.  
23 Q -- did you have armed security guards  
24 walk him out?  
25 A We had armed security guards walk all

270

1 three WTA out -- affected people walk out, all three of  
2 them.  
3 Q Is that a yes?  
4 A Yes.  
5 Q Weren't all the employees put into one  
6 room until Carmack left alone?  
7 A No, all employees were not.  
8 Q Did Carmack leave alone?  
9 A I was not in his presence when he left.  
10 Q Did armed security guards walk out Janet  
11 Williams?  
12 A It's my understanding that they were  
13 instructed to walk out all three.  
14 Q But you weren't there, is that what  
15 you're saying?  
16 A I was in another room. They did not all  
17 happen at the same time. They were -- it was  
18 sequenced.  
19 Q So are you telling us you don't know  
20 whether armed security guards walked out Janet Williams

21                                   Matlock dep tran  
or Joyce Brooks; correct?

22                   A       I know they were instructed. I know that  
23 Miss Brooks cried and felt unworthy after her years of  
24 service.

25                   Q       What was the name of the security guard 271

1 who walked out Joyce Brooks?

2                   A       I believe it was -- again, I wasn't  
3 there. The police chief for VHCC was in charge of that  
4 duty.

5                   Q       If you don't know, say "I don't know."

6                   A       Okay. I don't know.

7                   Q       Who was the security guard who walked out  
8 Janet Williams?

9                   A       It was a police officer. I don't know.  
10 I don't know who walked out Duffy, I don't know who  
11 walked out Janet, I don't know who walked out Joyce.

12                   Q       Have there been any positions available  
13 since the time Mr. Carmack was laid off?

14                   A       Yes.

15                   Q       Was there a test center proctor position  
16 posted on March 14, 2018, and a loan collections  
17 specialist -- strike that.

18                               Was there a test section -- center  
19 proctor position posted March 14, 2018?

20                   A       I don't know if that's the exact date.  
21                               We have hired a test proctor in the last  
22 year.

23                   Q       And a loan collections specialist  
24 administrative and office specialist three available in  
25 October or November of 2018?

1 A Yes.

2 Q As well as other positions; correct?

3 A Some hourly positions, yes, sir.

4 Q So you're continuing to hire.

5 A Those positions were people who -- they

6 were hourly positions where people left our service.

7 No one else was laid off. They were replaced.

8 Q You're continuing to hire new people;

9 correct?

10 A I'm continuing to keep the employment

11 level at the same as it was in June of '14.

12 Q Are or are you not continuing to hire new

13 people since the time Duffy Carmack's employment ended?

14 A We have hired new people.

15 MR. GRIMES: Mark that please.

16 (Recall dated 10/1/14 marked as Matlock  
17 Exhibit Number 60)

18 BY MR. GRIMES:

19 Q Exhibit 60 is a document called Recall.

20 Have you seen this policy before?

21 A No.

22 Q Was this policy followed with respect to

23 Duffy Carmack?

24 A No.

25

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1 (March to May 2018 email string between  
2 David Matlock, Kathy Hietala, Adam  
3 Tolbert, Deborah Rigdon re: WTA  
Exemption Letter marked as Matlock  
Exhibit Number 61)

4 BY MR. GRIMES:

5 Q Exhibit 61 is another string of emails,  
6 including an email from you to Kathy Hietala and Adam  
7 Tolbert on May 7, 2018, at the top of the page and an  
8 email from you to Debbie Rigdon on April 12, 2018;  
9 correct?

10 A Yes.

11 Q And there you write, in the second half  
12 of the paragraph, "Things are going well. We are  
13 investing in new programs and look forward to  
14 advertising for the marketing position at some point  
15 after the first of July. Thank you for all your help.  
16 David."

17 So you're looking for a marketing person;  
18 correct?

19 A Not yet.

20 Q You planned to advertise after the first  
21 of July of what year?

22 A I don't know.

23 Q Well, when you wrote the email and you  
24 used the word "July" on April 12, 2018 --

25 A That would have been '18.

274

1 Q --what year did you have in mind?

2 A I thought about '18.

3 Q Speaking of the new marketing position,  
4 you had Adam Tolbert change the organizational charts  
5 in late 2017; correct?

6 A Our organizational charts have changed,  
7 yes, sir.

8 Q At your direction?

9 A Yes, sir.

Matlock dep tran

10 Q And Adam Tolbert changed them; correct?

11 A Yes.

12 (12/18-19/17 emails between Donna  
13 Kauffman, Joyce Brooks, Adam Tolbert re:  
14 Org chart with no UVA number marked as  
Matlock Exhibit Number 62)

15 BY MR. GRIMES:

16 Q Exhibit 62 is an email from Donna  
17 Kauffman to Adam Tolbert dated December 19, 2017.

18 And if you look at the second page,  
19 you'll see an organizational chart; correct?

20 A Correct.

21 Q Dated August 2017; correct?

22 A Correct.

23 Q And there was only one vacancy at the  
24 time; correct? One vacant position.

25 Just take a moment to read it.

275

1 A As reflected in that chart, it -- it  
2 notates that there's a vacancy in housekeeping.

3 Q Look in the boxes on the left side of the  
4 page, second row, vacant building and grounds. Do you  
5 see a vacancy there?

6 A Oh, yes, I do.

7 Q Is that housekeeping or no?

8 A No, that's buildings and grounds.

9 (10/23/17 email from Adam Tolbert to  
10 David Matlock re: Org Chart - Updated  
11 and attached Organization Chart marked as  
Matlock Exhibit Number 63)

12 BY MR. GRIMES:

13 Q Exhibit 63 is an email from Adam Tolbert  
14 to you dated October 23, 2017.

Page 231

Matlock dep tran

15 In there you write, "David, attached is  
16 the organization chart you requested to be developed."

17 So you had Adam develop an org chart;  
18 correct?

19 A Correct, yes.

20 Q You say, "I believe this to be accurate  
21 based on our conversation last week."

22 So you provided the input into the org  
23 chart; correct?

24 A Yes.

25 Q And there's one black box on the org

276

1 chart. What is that for? If you know.

2 Do you know, sir?

3 A No. It looks like that would be the  
4 person, though, of the supervised conference services.

5 (10/23-24/17 emails between Adam Tolbert  
6 David Matlock re: Org Chart - Updated  
7 and attached Organization Chart marked  
as Matlock Exhibit Number 64)

8 BY MR. GRIMES:

9 Q Exhibit 64 is another email from Adam to  
10 you October 24, 2017, and he writes, "David, Per our  
11 discussion this morning, here is version two of the  
12 draft."

13 So as early as October of 2017, you were  
14 planning to have a marketing director position;  
15 correct?

16 A As early -- earlier than that.

17 The WTA process began in '16 and this is  
18 a draft.

19 Q Aren't people the life blood of your



20 business?

21 A Yes.

22 (12/11/17 email between Adam Tolbert,  
23 David Matlock RE: ReOrg#2 and attached  
Organization Chart marked as Matlock  
Exhibit Number 65)

24 BY MR. GRIMES:

25 Q Exhibit 65 is an email from Adam Tolbert

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1 to you dated December 11, 2017. There he writes,

2 "David, Attached is the updated chart. Let me know if  
3 more changes are needed."

4 Now, with respect to this chart, it looks  
5 like your assistant's son was placed in the trades  
6 technician spot between October 24, 2017 and  
7 December 11, 2017; is that correct?

8 A I'm not sure when he was hired, but he  
9 did take a full-time job.

10 Q Was this a newly-created position or a  
11 position that existed when you were hired at the  
12 agency?

13 A We spoke earlier of a young lady named  
14 Debbie who retired.

15 Q It looks like your assistant's daughter  
16 was placed in the building, scheduling and event data  
17 entry spot sometime between October 24, 2017 and  
18 December 11, 2017; correct?

19 A Incorrect. This is a proposed  
20 reorganization plan chart, "draft" in the upper  
21 left-hand corner, just to go along with the wording of  
22 the WTA.

23 Q But the draft was provided and created  
24 with your input; correct?

25 A Yes.

278

1 Q Was the position I've just described,  
2 building, scheduling and event data entry, a newly  
3 created position or one that existed when you were  
4 hired at the agency?

5 A That's a position that involved a lot of  
6 Mrs. Williams' duties. Mrs. Williams did a lot of  
7 that.

8 Q So in about a six-week time frame, you  
9 hired both of Kathy Hietala's kids to work at the  
10 Center; correct?

11 A All of Kathy Hietala's kids worked at the  
12 Center. When I was hired, they worked at the Center.

13 Mr. Carmack is the one who hired Hannah.  
14 I did not. They were already employed there.

15 (1/30/18 email from Adam Tolbert to Donna  
16 Kauffman, David Matlock RE: Meeting  
17 w/David and Adam? marked as Matlock  
Exhibit Number 66)

18 BY MR. GRIMES:

19 Q This WTA looks like an administrative  
20 pain in the butt.

21 Did you find it to be that way or no?

22 A No.

23 Q Exhibit 66 is an email from Adam Tolbert  
24 to you dated -- excuse me, Adam Tolbert to Donna  
25 Kauffman, copied to you, dated January 30, 2018.

279

1 There Adam writes, "Hi Donna, David  
2 wanted me to reach out and see if you had any time

Matlock dep tran  
3 available tomorrow (Wednesday, 1/31) to do a phone  
4 meeting to discuss some post WTA position changes."

5 And what position changes were taking  
6 place right after Carmack was fired?

7 MR. HARDY: Object to form.

8 MR. KINCER: Object.

9 BY MR. GRIMES:

10 Q You can answer.

11 A After the WTA process was initiated, it  
12 took several months to make all of that transition line  
13 up with the org chart. It just didn't happen  
14 overnight. We had vacancies, and it took a while.

15 Q Did you give any thought to creating a  
16 new position for Carmack or let him absorb duties of  
17 anybody else who wanted to retire, like Patricia Ball  
18 or Doug Viers?

19 A No. We were eliminating positions, not  
20 people.

21 (2015-2016 email string between Donna  
22 Kauffman, Erica Anne Wheat, Christina  
23 Lynn Landes, Bryan Garey, David Matlock,  
24 Darrell Kozuch, William Carmack RE:  
25 UStaff potential conversions at the  
SWVHEC marked as Matlock Exhibit Number  
67)

280

1 BY MR. GRIMES:

2 Q Did you consider eliminating Debbie  
3 Hensley's position?

4 A No, not her position.

5 Q Why not?

6 A Got to have a business manager.

7 Q Got to have an accountant, too; right?

8 Matlock dep tran  
A Debbie Hensley covers that. Debbie  
9 Hensley's position covers that.

10 Q Exhibit 67 is an email from Donna  
11 Kauffman to Erica Wheat, copied to a number of people,  
12 including you, referencing UStaff potential conversions  
13 at the Southwest Virginia Higher Education Center, it's  
14 marked high priority, dated January 28, 2016; correct?

15 A Correct.

16 Q And she writes, "Good afternoon Erica,  
17 Duffy Carmack, the Center's chief financial officer,  
18 stopped by to see me today on his way to Richmond. One  
19 of the topics I brought up was if their classified  
20 staff were still interested in potentially converting  
21 to university staff. The answer is a resounding,"  
22 quote, "yes," closed quote, exclamation point.

23 So was that a possibility --

24 A Yes.

25 Q -- to move employees to university staff?  
281

1 A Yes.

2 Q Would that have saved the Center money?

3 A I don't believe so. It was more of a  
4 convenience for -- for the employees.

5 Q Did you redo your job description before  
6 implementing the WTA?

7 A No.

8 Q Do you remember?

9 A I'm not even sure if I know where my job  
10 description is.

11 Q Well, but my question was, did you redo  
12 your job description before implementing the WTA, do

Matlock dep tran

13 you know?

14 A I believe the answer would be no. I

15 don't recall, but I believe it's no.

16 (10/31/17 email from David Matlock to  
17 Donna Kauffman RE: Position Descriptions  
18 with attached position descriptions for  
Executive Director/Agency Head and CFO  
marked as Matlock Exhibit Number 68)

19 BY MR. GRIMES:

20 Q Exhibit 68 is an email from you to Donna  
21 Kauffman dated October 31, 2017. There you write, "If  
22 you review my job description, it states the minimum  
23 requirement of ten years of educational experience in  
24 an upper leadership position," question mark, question  
25 mark. "I will call you later to discuss."

282

1 That's what you wrote; correct?

2 A Um-hum.

3 Q So you --

4 MR. KINCER: Yes?

5 THE WITNESS: Yes. I'm sorry. Yes.

6 BY MR. GRIMES:

7 Q So you thought your job description ought  
8 to be revised?

9 A No. I think I'm just stressing that it  
10 states a minimum of ten years of educational  
11 experience.

12 Q In the forward that is below, did you  
13 delete the date line?

14 A I don't know.

15 Q Can you tell me why a date line is not  
16 there?

17 A No, I cannot.

Matlock dep tran  
18 Q why is Adam Tolbert emailing you the job  
19 description for both the executive director/agency head  
20 and the chief financial officer?

21 A As we started the process to switch from  
22 UVA to DHRM, it was discovered that I was out in orbit  
23 and didn't really belong. I wasn't properly  
24 classified.

25 All the other agency heads had agency

283

1 head contracts with the Governor.

2 UVA was not aware of that when I was  
3 hired. So at that point, I was trying to get an agency  
4 head contract.

5 Q You were trying to get an agency head  
6 contract?

7 A I was trying to make us compliant.  
8 I have an agency head contract. That was  
9 an oversight.

10 Q why?

11 A Because UVA was our fiscal agent.

12 Q Therefore, you wanted an agency head  
13 contract?

14 A No, sir.

15 An agency head contract was what the  
16 Secretary of Education told me I needed to have.

17 (10/30-31/17 email string between David  
18 Matlock, Donna Kauffman, Carol Summers  
19 RE: SW marked as Matlock Exhibit Number  
69)

20 BY MR. GRIMES:

21 Q Exhibit 69 is an email from you to Donna  
22 Kauffman of October 31, 2017. And you write to Donna

Matlock dep tran  
23 kauffman, "I will be reviewing with the senior members  
24 of my leadership team this afternoon and should have  
25 some input for you early tomorrow."

284

1 And, David, Duffy Carmack was a member of  
2 your -- senior member of your leadership team; correct?

3 A He was.

4 Q But you did not meet with him that  
5 afternoon, did you?

6 A I did not meet with Joyce Brooks as well.  
7 I did not meet with anyone who I would normally meet  
8 with that was a part of the WTA process.

9 Q My question was whether you met with  
10 Duffy Carmack, and the answer is no, isn't it?

11 A If it's about this email, the answer  
12 would be no.

13 Q "After first read I would like to make  
14 the following observations. First, I have 27 years of  
15 continuous service with the State. The second thing is  
16 the statement that the CFO and the executive  
17 director/agency head have similar duties."

18 And that's how the job descriptions read,  
19 isn't it, the duties are similar?

20 A I don't think so.

21 Q But that's what you wrote here; correct?

22 A I write that, "The second thing is the --  
23 is the statement --" I believe that statement was  
24 written by Carol Summers.

25 Q Irrespective of who wrote it, Carol

285

1 Summers or the Pope, it really doesn't matter. You

Page 239

2 say, "The statement that the CFO and the executive  
3 director/agency head have similar duties." And that  
4 was of concern to you, wasn't it?

5 A Yes, it's an observation.

6 Q And then you say, "That is really not an  
7 accurate statement."

8 That's what you wrote; correct?

9 A That is correct.

10 Q So you wanted it changed; correct?

11 A I wanted what changed, sir?

12 Q You wanted the job description changed.

13 A No, sir.

14 Q You didn't?

15 A No. This email is not about a job  
16 description.

17 Q When you got rid of Duffy Carmack, did  
18 you spread the CFO duties over different people?

19 A Yes, I did.

20 Q To whom?

21 A Debbie Hensley.

22 Q What duties did she assume?

23 A She continued to do what she was doing,  
24 and that was managing the daily operations of the  
25 business office. She's the business manager.

286

1 Q Right.

2 What CFO duties were spread to Debbie  
3 Hensley?

4 A Daily business management.

5 Q Which is what she was doing before;  
6 correct?



7 A Exactly.  
8 Q Who else?  
9 A Pat Ball took on responsibility, more  
10 responsibility with the Tobacco Commission.  
11 Q Specifically what?  
12 A The employees that administer the program  
13 now report to her.  
14 Q And who is that?  
15 A Melissa, Paul.  
16 Q Anybody else?  
17 A No.  
18 Q And who else received some of  
19 Mr. Carmack's duties?  
20 A I took on all the DPB liaison day-to-day  
21 duties.  
22 Q Who else?  
23 A Adam Tolbert took on the testing center.  
24 Q And that requires that he do what?  
25 A Supervise three hourly employees, three

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1 wage -- three wage employees, part-time wage employees.  
2 Q Did you and Mr. Carmack discuss his OSIG  
3 or whistleblower complaint during the termination  
4 meeting?  
5 MR. HARDY: Object to form.  
6 BY MR. GRIMES:  
7 Q You can go ahead and answer.  
8 A Mr. Carmack at some point in the WTA  
9 activation process turned to me and said, "You know I'm  
10 the one that called OSIG."  
11 Q And you said?

12 A No.

13 Q Turning to the executive committee  
14 meeting on June 30, 2017, what was discussed at that  
15 meeting?

16 A My evaluation and the WTA plan.

17 Q Would the Center save money if you had  
18 not received your 3 percent raise?

19 A Of course.

20 Q Did you feel badly that you were getting  
21 a raise while you were planning to get rid of other  
22 people?

23 MR. KINCER: Objection to the form of the  
24 question.

25

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1 BY MR. GRIMES:

2 Q Was that of any concern to you?

3 A My concern as an agency head was to make  
4 the Center the most efficient and effective operations  
5 for the maximum return on investment for the taxpayer.  
6 I felt good about that.

7 Q Marcia Gilliam or Marsha Gilliam --

8 A Yes.

9 Q -- who is that?

10 A She's a former member of the Foundation  
11 and the designee for the State chancellor of the  
12 Virginia Community College System to the board, to the  
13 Center board.

14 Q Donna Henry is what?

15 A She's chancellor, UVA Wise.

16 Q And Gene Couch is what?

17 A President of VHCC.

18 Q What's happened to his employment?

19 A He currently is on special assignment  
20 with the chancellor of the Virginia Community College  
21 System.

22 Q What was he doing before that?

23 A He was president of VHCC.

24 Q So that sounds like something happened,  
25 when you're the president and now you're on special

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1 assignment. That doesn't sound like a good thing.

2 A That's --

3 Q You don't know?

4 A I have my own plate to worry about, sir.

5 Q Yeah.

6 So he's no longer the president?

7 A No.

8 Q He has been put on special assignment?

9 A Yes, sir.

10 Q Is somebody else acting as president?

11 A Yes.

12 Q Who is that?

13 A Charlie White.

14 Q What are Gene Couch -- what's his new  
15 special assignment?

16 A I don't know, sir. I don't work for the  
17 Virginia Community College System anymore.

18 Q Well, but you hear things sometimes,  
19 don't you?

20 A You always hear things.

21 Q What have you heard about his special

22 assignment?

23 A He's researching poverty in the golden --  
24 in the Golden Crescent, as the chancellor likes to  
25 refer to it.

290

1 Q Say it again?

2 A The chancellor refers to the poor  
3 Appalachian counties of western Virginia as the  
4 Golden -- he has a word for it, the horseshoe. The  
5 horseshoe. And I think that what I read was that  
6 President Couch is now doing research to support the  
7 chancellor's initiative with poverty in the Appalachian  
8 mountains.

9 Q Outside of the executive committee, when  
10 did the rest of the board first learn that they would  
11 be losing their CFO?

12 A January 4th, 2018.

13 Q They didn't know before?

14 A No, sir.

15 Q And that's the way you wanted it;  
16 correct?

17 A That's the way I was advised that it had  
18 to happen.

19 Q By?

20 MR. HARDY: Objection to the extent that  
21 the answer would implicate attorney/client privilege.

22 BY MR. GRIMES:

23 Q Go ahead and answer if you can.

24 A I --

25 MR. KINCER: If it doesn't, go ahead. If  
291

1 it does --

2 THE WITNESS: I think it would be  
3 attorney/client privilege.

4 BY MR. GRIMES:

5 Q Because it comes from Elizabeth Griffin?

6 MR. KINCER: Objection.

7 BY MR. GRIMES:

8 Q Well, I mean, did it come from Donna  
9 Kauffman?

10 A The fact that I didn't tell anybody?

11 Q Yeah.

12 A I don't recall.

13 Q Well, then I -- there can't be a good  
14 objection then.

15 who -- why did you decide not to let the  
16 rest of the board know that you were getting rid of  
17 your CFO until January 4, 2018?

18 A Because, first of all, they aren't  
19 responsible for the hiring and firing of employees of  
20 the Center.

21 Q Now, does their -- does the Foundation  
22 have a fund of money available to it?

23 A I believe they have a few thousand  
24 dollars.

25 Q A few thousand dollars?

292

1 A Yes, sir.

2 Q Did they not have about \$800,000  
3 available?

4 A It's my understanding and, again, I don't

Matlock dep tran  
5 have their books in front of me, that they have about  
6 380,000 in unrestricted funds available to them.

7 Q At the time that you let Duffy Carmack  
8 go, how much did the Foundation have available?

9 A I have no idea.

10 Q No idea.

11 And you've never asked --

12 A No, sir.

13 Q -- correct?

14 Did you want to know?

15 A No.

16 Q Didn't want to know.

17 (Southwest Virginia Higher Education  
18 Center Board of Trustees register marked  
as Matlock Exhibit Number 70)

19 BY MR. GRIMES:

20 Q The Center had about \$800,000 at the time  
21 that Duffy Carmack was let go; correct?

22 A The Center in nongeneral carry forward  
23 revenue is what you're relying -- relaying -- talking  
24 about?

25 Q I don't -- I don't know what you call

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1 "money." To me, it's all money.

2 A At the time of the WTA, we had in  
3 nongeneral revenue fund -- what was the number you  
4 used, sir?

5 Q I used \$800,000.

6 A And what was your question again?

7 Q You don't remember the question?

8 A No, sir.

9 Q Why don't we start over.

Matlock dep tran  
10 A Okay. Start over.  
11 Q At the time Duffy Carmack's employment  
12 ended, the Center had about how much money available?  
13 And don't put any qualifiers on the money. Just call  
14 it money.  
15 A 800, \$900,000 in nongeneral revenue.  
16 Q That was my question. 8 or \$900,000;  
17 correct?  
18 A Right.  
19 Q Just say yes.  
20 A Yes.  
21 Q Look at the next exhibit, please.  
22 MR. GRIMES: What's the number of that  
23 one?  
24 THE COURT REPORTER: 70.  
25

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1 BY MR. GRIMES:  
2 Q Do you recognize this document?  
3 A It appears to be from June, fiscal year  
4 '13.  
5 Q Right.  
6 If you turn the pages, all of the other  
7 years are there, too.  
8 Have you seen this document before?  
9 A Yes, sir. I examine this document  
10 monthly.  
11 Q Is there a budget shortfall shown by this  
12 document?  
13 A No. The Center, no.  
14 Q Does the Center have a surplus of funds

15                                   Matlock dep tran  
each year that you have worked there?

16                   A       Yes, sir.

17                                   (Southwest Virginia Higher Education  
18                                   Center Board of Trustees Minutes dated  
12/14/17 marked as Matlock Exhibit Number  
19                                   71)

20   BY MR. GRIMES:

21                   Q       Exhibit 71 is some minutes of the board  
22   of trustees from December 14, 2017; correct?

23                   A       Yes, sir.

24                   Q       And that was the meeting just before  
25   Duffy Carmack was told that he was losing his job;

295

1   correct?

2                   A       Yes, sir.

3                   Q       If you look at the third page, which is  
4   347, in the lower right-hand corner, there's the  
5   financial report. And that paragraph states, "Noting  
6   that he was celebrating his two-year anniversary as the  
7   Center's director, Matlock presented a comparison of  
8   the Center's current revenues to those of FY 2014.  
9   Total revenue for FY 2017 was 3.8 million, an increase  
10   of nearly \$700,000 over FY 2014. With total expenses  
11   increasing approximately \$160,000 for the same period,  
12   the Center realized a net gain of nearly \$510,000. He  
13   attributed the increase to the hard work of the  
14   Center's staff and academic partners."

15                                   And that was all true, wasn't it?

16                   A       Yes, sir.

17                   Q       And six positions were being advertised  
18   at that time; correct?

19                   A       I don't know how many. We had positions



Matlock dep tran  
20 open. We had housekeeping and part-time hourly wages,  
21 yes, sir.

22 Q And the Center had a rainy day fund  
23 with -- with more than \$700,000 in nongeneral fund  
24 revenue; correct?

25 A Correct.

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1 Q And their full-time -- three full-time  
2 employees who were paid by the Tobacco Commission;  
3 correct?

4 A There are three full-time employees paid  
5 by the Tobacco Commission, yes, sir.

6 Q Who are they?

7 A That would be Pat Ball, Melissa, and  
8 Paul.

9 Q In other words, they are not on the  
10 Center's payroll; correct?

11 A If flows through. It washes.

12 Q So it's a wash; correct?

13 A That's correct.

14 Q Did you include their salaries in your  
15 budget numbers that you submitted concerning the work  
16 Force Transition Act? Did you include their salaries  
17 in the budget numbers you submitted concerning the work  
18 Force Transition Act?

19 A I don't believe so.

20 Q To the extent you did, they shouldn't be  
21 in there, should they?

22 A It's a wash.

23 Q And the financial strength of the Center  
24 was good throughout Carmack's employment, wasn't it?

25 A Yes. Matlock dep tran

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1 (7/21/16 email from David Matlock to HEC  
2 Staff RE: Please Review!! Lunch will be  
3 ready at 12:30 today! marked as Matlock  
Exhibit Number 72)

4 BY MR. GRIMES:

5 Q Exhibit 72 is an email from David Matlock  
6 to HEC staff dated 21 July 2016.

7 A Um-hum.

8 Q And there you write concerning the  
9 2015/2016 school year.

10 The first bullet point, "we finished the  
11 year with a strong increase in overall Center activity  
12 and our financial position remains very solid,"  
13 exclamation point. "For the year, revenues were up by  
14 32 percent for Cooking Along the Crooked road,  
15 22 percent (largest dollar increase) for leased space  
16 and 59 percent for the testing center," exclamation  
17 point, exclamation point.

18 And all that's true, wasn't it?

19 A The percentages are -- I'm going to  
20 assume they are correct. I try to be as accurate as  
21 possible.

22 Q Exhibit 73 is an email from David  
23 Matlock -- that's you.

24 A That's -- my 73 is just a blank sheet of  
25 paper.

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1 MR. HARDY: I have a partial email.

2 MR. GRIMES: Let's see what we have.

3 BY MR. GRIMES:

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4 Q Debbie Hensley, does she have a master's  
5 degree?

6 A I don't believe she does.

7 Q Is that a requirement for the CFO  
8 position?

9 A No. She's -- she's not the CFO.

10 Q Pardon?

11 A She's not the CFO.

12 Q Because she couldn't be because she  
13 doesn't have a master's degree; correct?

14 A We don't need a CFO.

15 Q You made that decision long ago, haven't  
16 you?

17 A January 4, 2018.

18 Q Who does Carmack's duties for the  
19 Foundation now?

20 A What needs to be done, the Foundation  
21 operates with the assistance of Alicia Young.

22 Q Carmack was never written up, was he?

23 A Not to my knowledge, not by me.

24

25

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1 (11/1-2/17 emails between Richard Scholl,  
2 Eric Myer, Jeff Webb, David Matlock RE:  
3 Follow-up Information marked as Matlock  
Exhibit Number 73)

4 BY MR. GRIMES:

5 Q Exhibit 73; have you seen this document  
6 before?

7 A I believe so, yes, sir.

8 Q Pardon?

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9 A Yes, sir.  
10 Q And can you tell me what this document  
11 concerns?  
12 A It appears that the police officer with  
13 OSIG is requesting, I believe -- I believe the  
14 request -- let me read -- let me read through.  
15 I believe they were requesting multiple  
16 years of Mr. Carmack's emails.  
17 Q And did you send them in the form of a  
18 zip file?  
19 A It -- it appears that Jeff Webb did.  
20 Q Where is that zip file?  
21 A Eric Myer, maybe. I don't know.  
22 Q You don't know?  
23 A No.  
24 Q But somebody sent a zip file with  
25 Carmack's emails to OSIG; correct?

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1 A As requested, sir.  
2 MR. GRIMES: Ryan, could we get that, by  
3 chance, the contents of the zip file?  
4 MR. HARDY: We'll look into it, yes.  
5 MR. KINCER: Of Mr. Carmack's email  
6 account.  
7 MR. GRIMES: Whatever was in the zip  
8 file. Whatever is described here. The zip file.  
9 MR. KINCER: Right, right.  
10 But you had said Mr. Carmack's emails  
11 here, not the Commonwealth's emails.  
12 MR. GRIMES: He said that.  
13 MR. KINCER: I don't think so.

14 MR. GRIMES: I don't know what's in the  
15 zip file.

16 MR. KINCER: Okay.

17 MR. GRIMES: Whatever -- whatever was  
18 sent by Jeff Webb to OSIG referenced in this email of  
19 November 2, 2017, Exhibit 73.

20 BY MR. GRIMES:

21 Q Do you know anything about Ann Dunham's  
22 report to OSIG?

23 A No.

24 Q The Center had to use nongeneral revenue  
25 for approximately the last two months for wages to

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1 employees; correct?

2 A That is correct. That is correct.

3 Q Why not just use it for three months  
4 then?

5 A Because general funds, I'm given so many  
6 dollars of general funds to pay salaries and maintain  
7 the Center, and I'm not given enough by the General  
8 Assembly to operate for 12 months.

9 So the standard practice before I  
10 arrived, during Mr. Carmack's interim and it continued,  
11 was you spend your general fund money on general fund  
12 approved expenditures first, and then I'm tasked with  
13 maintaining an agency with money that we raise.

14 If we don't raise it, that's why we have  
15 a reserve.

16 Q Who have you pulled the trigger on other  
17 than Duffy Carmack who did not already want to retire?

18 A The WTA was three people: Joyce Brooks,

19 Janet Williams and Duffy Carmack.

20 Q And Williams and Brooks had already  
21 talked about retiring; correct?

22 MR. KINCER: Asked and answered.

23 BY MR. GRIMES:

24 Q You can answer.

25 A Mr. Carmack, Mrs. Brooks and

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1 Mrs. Williams had all talked to me about their  
2 retirement at some point in the future.

3 Q In the sense that everybody who works  
4 talks about retirement at some point in the future?

5 A In that sense.

6 My duty is to look out for the future of  
7 the Center.

8 Q You would agree that some of us are  
9 closer to retirement than others; correct?

10 A It's a general statement that I believe  
11 to be true.

12 Q And some people talk more about  
13 retirement than others?

14 A That is true. Some people talk a lot  
15 about retirement.

16 MR. GRIMES: All right. I believe that  
17 I -- I'm just about finished. Let me find a conference  
18 room and have a conversation.

19 (A recess was taken from 4:40 p.m. until  
20 4:44 p.m.)

21 MR. GRIMES: No additional questions.

22

23 EXAMINATION

24 BY MR. KINCER:

25 Q I have a couple for you, sir, before we 303

1 leave here today.

2 Question, who is Sean Webb?

3 A Sean is the -- doing most of the  
4 marketing lifting now. But that's not his degree. He  
5 is a graphic designer.

6 Q What is Cooking Along the Crooked Road?

7 A That is a -- was a program that provided  
8 a -- fun, personal enrichment classes where you could  
9 learn knife skills, how to cook with different types of  
10 onions, cooking pizza the Mellow Mushroom way. Just  
11 different chefs would come in, and you could sign up  
12 for a class on Monday night.

13 MR. KINCER: That's all the questions I  
14 have.

15 Does that prompt anything further?

16 MR. GRIMES: It does not.

17 He will read?

18 MR. HARDY: He will read.

19 MR. GRIMES: Thank you very much.

20 (Whereupon, the deposition was concluded  
21 at 4:45 p.m.)

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4 February 20, 2019

5

6 Office of the Attorney General  
7 E. Lewis Kincer, Jr., Esq.  
202 North 9th Street  
Richmond, VA 23219

8

9 In RE: Carmack v. Commonwealth of Virginia

10

11 Dear Mr. Kincer:

12 Please have the witness read and sign the transcript  
13 and execute the errata pages before a notary public.  
Once executed, the executed errata pages should be  
14 returned to:

15

16 Terry N. Grimes, Esq.  
Grimes & Haddox, PC  
320 Elm Avenue, SW  
Roanoke, VA 24016

17 The timeline is 30 days in which to have the transcript  
18 read and signed. If the transcript is not read and  
signed within 30 days, it is deemed signed and may then  
be used as though signed.

19

20 Thank you for your prompt attention to this matter.

21

Kerry E. Zahn, RMR-CRR

22

23 cc: Terry N. Grimes, Esq.

24

25

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1 I, DAVID N. MATLOCK, do hereby certify that I  
2 have read the foregoing transcript of my testimony and  
3 further certify that said transcript, with the  
4 corrections noted below, is a true and accurate  
5 transcript of said testimony.

6 Dated at \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_,



12 Matlock dep tran  
Subscribed and sworn to before me this \_\_\_\_\_  
13 day of \_\_\_\_\_, 2019.

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21 MY COMMISSION EXPIRES: Notary Public

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1 COMMONWEALTH OF VIRGINIA AT LARGE, to wit:

2 I, Kerry E. Zahn, RMR-CRR, Notary Public for  
3 the Commonwealth of Virginia at Large, of qualification  
4 in the Circuit Court of the City of Norfolk, Virginia,  
5 and whose commission expires March 31, 2021, do hereby  
6 certify that the within named deponent, DAVID N.  
7 MATLOCK, appeared before me at Richmond, Virginia, as  
8 hereinbefore set forth, and after being first duly  
9 sworn by me, was thereupon examined upon his oath by  
10 counsel for the parties; that his examination was  
11 recorded in Stenotype by me and reduced to computer  
12 printout under my direction; and that the foregoing  
13 constitutes a true, accurate and complete transcript of  
14 such proceeding.

15 I further certify that I am not related to nor  
16 otherwise associated with any counsel or party to this

17 proceeding, nor otherwise interested in the event  
18 thereof.

19 Given under my hand and notarial seal this  
20 20th day of February, 2019, at Norfolk, Virginia.

21

22

23

24 Kerry E. Zahn RMR-CRR  
25 Notary Registration No. 209810

†